

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DENNIS DIMON,

Plaintiff,

V.

Civil Action No. 05-11073 REK

METROPOLITAN LIFE INSURANCE CO.,)
KEMPER INSURANCE CO., MORGAN)
STANLEY DW, INC., MICHAEL B. LATTI,)
LATTI ASSOCIATES, and LATTI & ANDERSON))
LLP,)

Defendants.

**MICHAEL B. LATTI, LATTI ASSOCIATES, AND LATTI & ANDERSON LLP'S
MOTION FOR SUMMARY JUDGMENT AGAINST DENNIS DIMON
[Statement of Material Facts and Memorandum in Support Thereof Included]**

INTRODUCTION

Michael B. Latti, Latti Associates, and Latti & Anderson (collectively hereafter, “Latti Associates”) move this court to enter summary judgment in their favor on all counts of the Complaint brought against them by Dennis Dimon. Specifically, Dennis Dimon’s claim against Latti Associates for legal malpractice is premature because Mr. Dimon cannot establish on the facts before this Court that Latti Associates’ alleged negligence was the proximate cause of any damages suffered by him. The underlying dispute concerning whether Mr. Dimon is entitled to lifetime payments pursuant to a previous settlement agreement must be resolved before any potential damages caused by Latti Associates’ alleged negligence can exist. Since Mr. Dimon cannot establish the

essential element of causation as to Latti Associates, Latti Associates is entitled to summary judgment. Further, if mere notice that co-defendant MetLife intended to cease annuity payments in 2003 caused Mr. Dimon's cause of action against Latti Associates to accrue, then his claims are barred by the applicable statute of limitations.

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1

In 1981 Latti Associates¹ brought a suit in United States District Court for the District of Rhode Island on behalf of Dennis Dimon for personal injuries suffered while working aboard the Jenny C., a vessel owned by Jenny C. Inc. Complaint in Dennis Jay Dimon v. Jenny C., Inc., C.A. No. 81-0063, D. RI, attached as Exhibit A. Latti Associates obtained a favorable jury verdict in February of 1983 in an amount in excess of the applicable liability insurance, and subsequently settled the case for a lump sum payment and a lifetime annuity. See Transcript of May 3, 1983 hearing in the United States District Court for the District of Rhode Island ("May 3, 1983 Hearing Transcript"), pp. 1, 6, attached as Exhibit B.

Pursuant to that settlement agreement, on April 19, 1983 Dennis Jay Dimon executed a General Release in which he agreed to release all claims against Jenny C. Inc. in exchange for "payment of Two Hundred Fifty Thousand and No/100 (\$250,000) Dollars and the establishment of a fully paid annuity contract for my benefit with Charter Life Insurance Company², to pay [Dennis Jay Dimon] One Thousand Four Hundred Fifty

¹ We will use Latti Associates when referring to the defendant Latti entities in this motion for simplicity and clarity. By doing so, Latti & Anderson LLP does not concede that it is a successor entity to Latti Associates or Michael B. Latt.

² Charter Life Security was the name of the company who issued the annuity in question. Defendant Metropolitan Life Insurance Co.'s ("MetLife") counsel has stipulated that MetLife is legally responsible for Charter Life Security's conduct in this case. Deposition of Barbara Fasman, pp. 20, attached as Exhibit C.

and No/100 (\$1,450.00) Dollars per month for one year following the execution of that contract and thereafter, such monthly sum increased at the rate of three (3%) percent per year, compounded annually, to be paid to [Dennis Jay Dimon] during the term of [his] life, and in no event for less than twenty (20) years...” See General Release, attached as Exhibit D. Jenny C., Inc.’s liability insurer was defendant Kemper Insurance Co.

(“Kemper”).³ Kemper acknowledges that this General Release accurately reflects the terms of the settlement agreement between Mr. Dimon and Jenny C. Inc. Mensie Dep. pp. 217-18, attached as Exhibit E.

After the settlement agreement was reached, a *guardian ad litem* was appointed on behalf of Mr. Dimon and a hearing was convened by Judge Petine in the District of Rhode Island on May 3, 1983 to ensure that Mr. Dimon understood the terms of the settlement. May 3, 1983 Hearing Transcript, pp. 2, attached as Exhibit B. At the hearing, the *guardian ad litem*, a Rhode Island attorney named Leonard Decof, testified that “[t]he settlement, as it was agreed upon, provided for a payment, a cash payment, of \$250,000; and in addition to that, a structured settlement of \$1450.45 per month guaranteed for 20 years but which would continue for the life of the plaintiff.” *Id.*, pp. 6. This testimony concerning the terms of the settlement is consistent with the General Release and accurately states the terms of the settlement arrived at by the parties. Guy Wells, W. Slater Allen, and Jerome B. Spunt, attorneys representing Jenny C. Inc. and its insurance companies, participated in the *guardian ad litem*’s review of the settlement and

For simplicity and clarity, Charter Life Security and MetLife will both be referred to as MetLife throughout this Motion.

³ The actual name of the insurance company that insured Jenny C. Inc., and whose name appears on the documentation from 1983, is American Motorists Insurance Company. American Motorists Insurance Company is a part of the named defendant Kemper Insurance Co. Deposition of William R. Mensie (“Mensie Dep.”), pp. 243-44, attached as Exhibit E. For simplicity and clarity, American Motorists and Kemper Insurance Co. will both be referred to as Kemper throughout this Motion.

were all present at this hearing. Id., pp. 9 and caption page noting appearances. In fact, the insurance companies represented by Mr. Allen and Mr. Wells paid the *guardian ad litem's* fee. Id., pp. 20. The *guardian ad litem* and the court concluded that Mr. Dimon did understand the nature of the settlement and was entering into it upon his free will. Id., pp. 18-19, 21.

Pursuant to the settlement agreement, Kemper applied for and received an annuity policy from MetLife providing for “[m]onthly payments in the amount of \$1,450.45, increasing 3% annually, commencing on June 6, 1983, for a period of 240 months certain and life thereafter.” Mensie Dep., pp. 223-25, attached as Exhibit E. The policy issued by MetLife is dated June 17, 1983. A copy of the June 17, 1983 Single Premium Deferred Annuity is attached as Exhibit F. Again, the payment terms of this annuity were consistent with, and met Kemper’s obligations concerning, the settlement agreement between Mr. Dimon and Jenny C. Inc. See Mensie Dep., pp. 239-40, attached as Exhibit E.

Payments began under the settlement agreement in June of 1983. Approximately a month later, MetLife contacted Dean Witter Reynolds (the broker who apparently brokered the sale of the annuity from MetLife to Kemper) indicating that, due to a clerical error, the annuity purchased by Kemper for Mr. Dimon stated incorrect payment terms. July 14, 1983 letter to Kurt Snyder from Barbara Boehm, attached as Exhibit G.⁴ Specifically, MetLife claimed that the payment term for the annuity payments should have read 240 months (or 20 years) only, and not 240 months certain and life thereafter. Id. Kemper then responded with a letter of its own indicating that MetLife’s change in

⁴ By citing this letter and the numerous that come after between the predecessor entities of the co-defendants concerning the dispute over the “clerical error”, Latti Associates does not concede that such letters are admissible as to them at trial, but will reserve that argument for a later time.

the annuity terms was not acceptable, and that Kemper considered the original annuity calling for lifetime payments enforceable. August 12, 1983 letter to Robert A. Foley from John L. Noe, attached as Exhibit H. During the next several months MetLife and Kemper traded correspondence concerning this issue; MetLife claiming that the annuity was for 240 months only, and Kemper maintaining that it considered the original annuity for life to be the enforceable agreement between the parties. See September 26, 1983 letter to John L. Noe from Robert Ligouri, attached as Exhibit I; October 10, 1983 letter to Robert Ligouri from John L. Noe, attached as Exhibit J; October 14, 1983 letter to John L. Noe from Barbara Boehm, attached as Exhibit K. In what appears to be the final letter of this exchange⁵, John Noe of Kemper explicitly rejected MetLife's changed terms, and stated that Kemper will retain the original annuity and considers it valid and enforceable. October 12, 1983 letter to Barbara Boehm from John L. Noe, attached as Exhibit L. There was no further correspondence between MetLife and Kemper concerning this issue.

Roger Hughes, a partner of Latti Associates at that time, was apparently carbon copied on some but not all of the letters between Kemper and MetLife, though Mr. Hughes does not recall seeing these letters. Deposition of Roger Hughes ("Hughes Dep."), pp. 32, 34-35, and 39-40, attached as Exhibit M. Michael B. Latti also does not recall seeing copies of the letters that Roger Hughes was apparently copied on, nor did he have knowledge of the dispute between Kemper and MetLife concerning the term of the annuity until this litigation arose. Deposition of Michael B. Latti ("Latti Dep."), pp. 90-91, attached as Exhibit N.

⁵ The final letter is dated October 12, 1983, but this appears to be in error because it directly references Barbara Boehm's October 14, 1983 letter.

The Dimons allege that they were not aware of the dispute over the term of the annuity in 1983. In September of 1999, however, the Dimons did become aware that MetLife considered this annuity to be 240 months only, and that the final annuity payment would be made May 5, 2003. Specifically, sometime prior to September 1999 the Dimons were contacted by the bank with whom they were applying for a mortgage and told that there was an issue with the annuity, which they had identified as income during the application process. Deposition of Katherine Dimon (“K. Dimon Dep.”) pp. 10, 83-84, attached as Exhibit Q. According to Mrs. Dimon, a gentleman from the bank informed the Dimons that he called MetLife concerning the annuity, and MetLife “said that it wasn’t for life, it was only twenty years...” Id., pp. 84. Shortly thereafter, Teresa Thorp of MetLife sent a letter to the Dimons dated September 24, 1999, confirming that the final annuity payment would be May 5, 2003. September 24, 1999 letter from Teresa Thorp to Dennis Dimon, attached as Exhibit P. Mr. Dimon admitted to receiving this letter and that it informed him that annuity payments would cease on May 5, 2003.

Plaintiff Dennis Dimon’s Response to Defendant, Metropolitan Life Insurance Company’s First Set of Requests for Admission, Nos. 5-6, attached as Exhibit Q. When questioned about receiving this letter at his deposition, Mr. Dimon testified as follows:

- Q: So, when you learned in September of 1999 that the final payment on your annuity was going to be in May of 2003, what did you do with that information?
- A: Like I said before, I thought it was a mistake, and I said they didn’t know, I told my wife they don’t know what they’re talking about, you know. It wasn’t no signed document, you know, nothing was ever said, so, I just blew it off.

D. Dimon Dep., pp. 100-01, attached as Exhibit R. Consistent with his testimony, Mr. Dimon did not take any action at that time upon learning that the final annuity payment would be on May 5, 2003.

When Mr. Dimon did not receive an annuity payment in June of 2003 his wife contacted MetLife. K. Dimon Dep., pp. 36, attached as Exhibit O. In response, MetLife sent a letter confirming its position that the annuity had been for 20 years and the final payment was made on May 5, 2003. June 9, 2003 letter from Sandy Franklin to Dennis Dimon, attached as Exhibit S. Thereafter, Mr. Dimon sought legal advice and filed the current lawsuit on May 23, 2005.

During the 20 years between the settlement of the Jenny C. case and MetLife ceasing payments to Mr. Dimon in June of 2003, Mr. Dimon and his family contacted Latti Associates only once. See D. Dimon Dep., pp. 153-55, attached as Exhibit R.

ARGUMENT

Latti Associates is entitled to summary judgment on the legal malpractice claim brought by Dennis Dimon because Mr. Dimon cannot, as a matter of law, establish that any alleged negligence he has attributed to Latti Associates has proximately caused him any damages. Specifically, until the underlying dispute concerning the enforcement of the settlement agreement in the Jenny C. Inc. case and the resulting annuity is resolved, Mr. Dimon's claim of damages caused by Latti Associates' alleged failure to inform him of, and to take action on, the information that MetLife considered the annuity to be for 20 years only is speculative, and his malpractice action is, therefore, premature. Further, in so far as Mr. Dimon's claim against Latti Associates is based on their failure to provide

for a lifetime annuity as part of the settlement, that claim is barred by the statute of limitations because Mr. Dimon was on notice in September of 1999 that the annuity was for 20 years only.

I. Summary Judgment Standard

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c). An issue is “genuine” if the pertinent evidence is such that a rational factfinder could resolve the issue in favor of either party, and a fact is “material” if it “has the capacity to sway the outcome of the litigation under the applicable law.” Nat’l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir.1995).

The moving party bears the burden of showing the Court that no genuine issue of material fact exists. Id. Once the movant has made the requisite showing, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading, but ... must set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e). Though the Court views all facts and draws all reasonable inferences in the light most favorable to the nonmoving party, the nonmovant still bears the “burden of producing specific facts sufficient to deflect the swing of the summary judgment scythe.” Mulvihill v. Top-Flite Golf Co., 335 F.3d 15, 19 (1st Cir.2003).

II. Dennis Dimon cannot establish that Latti Associates' alleged negligence caused him any damages, and therefore his legal malpractice action is premature and summary judgment in Latti Associates' favor is appropriate.

“To prevail on a claim of negligence by an attorney, a client must demonstrate that the attorney failed to exercise reasonable care and skill in handling the matter for which the attorney was retained, that the client has incurred a loss, *and that the attorney's negligence is the proximate cause of the loss.*” Colucci v. Rosen, Goldberg, Slavet, Levenson & Wekstein, P.C., 25 Mass.App.Ct. 107, 111 (1987) (internal citations omitted) (emphasis added). Mr. Dimon cannot succeed on an action for malpractice against Latti Associates unless he establishes that the alleged negligence of Latti Associates has caused him to be denied the lifetime payments due him under the settlement agreement in the Jenny C. Inc. case. Since the underlying dispute as to whether or not Mr. Dimon can enforce the settlement agreement has not yet been resolved, Latti Associates' alleged negligence has not yet caused any damages to Mr. Dimon. Since he cannot prove the essential element of causation, Mr. Dimon's claims against Latti Associates cannot succeed as a matter of law, and summary judgment for Latti Associates is appropriate.

When an attorney's negligence is related to the handling of an underlying dispute, it is premature to bring a legal malpractice action until that underlying dispute has been resolved because the alleged negligence cannot yet have caused any damages. In Wehringer v. Powers & Hall, P.C., 874 F.Supp. 425 (D. Mass. 1995) the plaintiff brought a legal malpractice action alleging that the defendants' failure to take certain actions on his behalf in an ongoing dispute constituted negligence. The District of Massachusetts granted the defendants' motion to dismiss on the grounds that the plaintiff could not

establish that the defendants' alleged negligence caused him any damages because the underlying dispute had not yet been resolved. Id. at 428. The court stated that "[a]t the time the plaintiff filed his complaint in the instant case, his cause of action for legal malpractice had not yet accrued, as the underlying suit was still pending... Therefore, accepting as true plaintiff's allegation that the defendant acted negligently in ceasing to provide professional services, plaintiff may not press his claim for damages without proof that he probably would have succeeded in his underlying lawsuit. However, [the plaintiff] cannot offer such proof until the underlying lawsuit has been resolved." Id., at 427-28.

The District Court's decision in Wehringer was subsequently upheld by the First Circuit. See Wehringer v. Power and Hall, P.C., 1995 WL 536047 (1st Cir.1995). On appeal, the plaintiff argued that even before the outcome of the underlying case is decided, he has suffered harm by the defendant attorney's failure to amend the complaint and add a now time barred claim against a defendant in the underlying action. Id., at *1. The First Circuit rejected that argument concluding that "even if [defendant attorney] was negligent in failing to amend the complaint prior to the running of the statute of limitations, [the plaintiff] has suffered no loss therefrom unless the claim probably would have succeeded. Until the underlying lawsuit is completed, [the plaintiff] cannot offer such proof. Therefore, the complaint fails to allege harm as the proximate result of [the defendant attorney's] alleged negligence in failing to amend the complaint." Id., at *2.

Just as in Wehringer, Mr. Dimon's legal malpractice claim against Latti Associates has not accrued because Mr. Dimon cannot establish that Latti Associates' alleged negligence caused any damages until the underlying dispute is resolved. Mr.

Dimon alleges that Latti Associates was negligent in not informing him in 1983 that MetLife only intended to make annuity payments for 20 years and not for life, and/or for not taking action on his behalf in response to such information. The only way that Latti Associates' conduct caused him any harm, therefore, is if Mr. Dimon was entitled to lifetime payments under the original settlement agreement, but that he will be unable to collect such payments due to Latti Associates' negligence. See Collucci, supra. at 113 (holding that the plaintiff in a malpractice action based on the negligence of an attorney in an underlying dispute "must show that, *but for the attorney's failure*, the client probably would have been successful in the prosecution of the litigation giving rise to the malpractice claim.") (emphasis added). Until there are facts sufficient to establish that Latti Associates' conduct has impaired Mr. Dimon's right to recover the full value of the settlement agreement, Mr. Dimon's claim of harm is speculative and this malpractice action is premature. See Derosier v. White, 1995 WL 809721, at *3 (Mass. Super. Feb. 10, 1995) (Rup, J.) (granting summary judgment in favor of a defendant attorney when plaintiff failed to show "that if he were to obtain a favorable judgment [in the underlying dispute], the defendant's acts or omission would prevent him from recovering on such judgment", making his claim of damages "speculative", and thus his malpractice claim "premature.") (citing Wheringer, supra.).

Further, not only are there insufficient facts at present to establish a claim of damages against Latti Associates, it appears that such facts will not exist in the future either. There appears to be no dispute that the settlement agreement in the underlying litigation provided for lifetime payments to Mr. Dimon. Contrary to instances where a settlement provides for a single premium amount intended for the purchase of an annuity,

the underlying settlement in this case explicitly indicates that payments are to be made to Mr. Dimon for a period of no less than 20 years, and then for his life thereafter. These express terms are contained in the General Release executed by Mr. Dimon, they were read into the record at the settlement hearing, and these lifetime payments were acknowledged by Kemper's 30(b)(6) deponent. See General Release, attached as Exhibit E; May 3, 1983 Hearing Transcript, pp. 6, attached as Exhibit B; Mensie Dep. pp. 217-18, attached as Exhibit D. This settlement agreement was breached in June of 2003 when the required payments ceased, and Mr. Dimon subsequently brought this action for enforcement within the requisite six year limitations period. MASS. GEN. LAWS ANN. ch. 260, § 2 (2006) ("Actions of contract ... shall, except as otherwise provided, be commenced only within 6 years next after the cause of action accrues.")⁶. Therefore, the only question in this litigation is whether the lifetime payments are to be made to Mr. Dimon by Kemper directly, or whether MetLife must make the payments to Mr. Dimon pursuant to the annuity it sold to Kemper in 1983. If it is established that the MetLife annuity requires lifetime payments, then MetLife must make such payments to Mr. Dimon. If it is established that the MetLife annuity was, in fact, only for 20 years, that does not absolve Kemper of its obligation to provide lifetime payments pursuant to the terms of the settlement agreement. Since Mr. Dimon's claims against Kemper and MetLife are not time barred, Latti Associates' alleged negligence in not informing Mr.

⁶ The limitations period for Mr. Dimon's claim of breach of the annuity did not begin to run in 1983 when MetLife informed Kemper that it believed the annuity was for 20 years and not for life because Massachusetts has long not recognized anticipatory repudiation as breach of a contract. See Daniels v. Newton, 114 Mass. 530 (1874). Further, the facts indicate that Mr. Dimon was not aware of MetLife's position until, at the earliest, September of 1999, so even if MetLife's apparent repudiation did cause a breach of contract action to accrue, it did so only then. And finally, even if Mr. Dimon were precluded from seeking recovery in contract from MetLife on the annuity, there was never an indication that Kemper did not intend to fulfill its obligations to Mr. Dimon under the settlement agreement until payments actually ceased in 2003. Therefore, Mr. Dimon's claim against Kemper for breach of contract is not time barred even if MetLife's repudiation in 1983 caused a claim to accrue against MetLife.

Dimon of the dispute between Kemper and MetLife concerning the payment terms of the annuity cannot have impaired Mr. Dimon's ability to proceed against them, and therefore, cannot have caused any damages as a matter of law.

III. If The Malpractice Action Against Latti Associates Accrued Merely By Notice That Metlife Intended Payments To Cease After May Of 2003, It Is Barred By The Statute Of Limitations.

At the latest, Mr. Dimon was on notice in September that his annuity payments would cease in May of 2003. Therefore, in so far as Mr. Dimon's claim against Latti Associates for legal malpractice accrued upon notice that the payments to Mr. Dimon would cease (again, Latti Associates maintains that such a claim has not yet accrued), that claim is barred by the three year statute of limitations applicable to legal malpractice actions.

The statute of limitations in actions for attorney malpractice is three years. MASS. GEN. LAWS ANN. ch. 260, § 4 (2006). "The statute of limitations applicable to a legal malpractice claim begins to run when a client 'knows or reasonably should know that he or she has sustained appreciable harm as a result of the lawyer's conduct.'" Vinci v. Byers, 65 Mass.App.Ct. 135, 138-39 (2005), quoting Williams v. Ely, 423 Mass. 467, 473 (1996). If Mr. Dimon alleges that his claim against Latti Associates accrued upon notice from MetLife that it intended to cease payments, then the statute of limitations began running in September of 1999 when the Dimons were made aware that the final annuity payment would be May of 2003. As Mr. Dimon testified at his deposition, he did nothing in response to that information and, in fact, "blew it off." D. Dimon Dep., pp. 100-01, attached as Exhibit R. Therefore, the three year limitations period expired in

September of 2002, approximately 2 ½ years before Mr. Dimon filed this lawsuit, and Mr. Dimon's claims against Latti Associates are time barred.

CONCLUSION

Based on the foregoing, Michael B. Latti, Latti Associates, and Latti & Anderson LLP are entitled to summary judgment on the claims brought in the instant action by Dennis Dimon.

Request for Hearing

Michael B. Latti, Latti Associates, and Latti & Anderson LLP request a hearing on this Motion for Summary Judgment.

MICHAEL B. LATTI, LATTI
ASSOCIATES, and LATTI & ANDERSON
LLP,

By their attorneys,

A handwritten signature in black ink, appearing to read "J. Owen Todd", is written over a horizontal line.

J. Owen Todd (BBO #499480)
John E. (Jed) DeWick (BBO #654723)
Todd & Weld LLP
28 State Street, 31st Floor
Boston, MA 02109
(617) 720-2626

Rule 7.1 Certification

I hereby certify that I have conferred with counsel for plaintiffs prior to filing this motion and was unable to resolve the issues herein.

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

* * * * *
DENNIS JAY DIMON,
Plaintiff
vs.
JENNY C., INC.,
Defendant
* * * * *

81-0063

PLAINTIFF'S COMPLAINT

Now comes the plaintiff in the above-entitled action
and says:

COUNT I

First: The plaintiff is a resident of Kenyon in the State of Rhode Island a seaman and, at all times hereinafter referred to, a member of the crew of the F/V JENNY C.

Second: The defendant is Jenny C., Inc. duly organized under the laws of the State of Rhode Island with a principal place of business in Pt. Judith, Narragansett within the District of Rhode Island, and, at all times herein-after referred to, owned, operated and controlled the F/V JENNY C.

Third: On or about January 24, 1981 the plaintiff was in the employ of the defendant as a seaman on the F/V JENNY C.

Fourth: On or about January 24, 1981 while the said JENNY C. was in navigable waters, and while the plaintiff was in the exercise of due care in the performance of his duties, he sustained severe and painful personal injuries

Fifth: The injuries sustained by the plaintiff were not caused by any fault on his part, but were caused by the fault of the defendant, its agents or servants, as follows:

- (a) Failure to use due care to provide and maintain a seaworthy vessel with safe and proper appliances.
- (b) Failure to use due care to make reasonable and periodic inspection of the said vessel, its equipment and appliances.
- (c) Failure to use due care to furnish the plaintiff with a reasonably safe place in which to perform his work.

- (d) Failure and negligence of fellow employees.
- (e) Failure and negligence in other respects that will be shown at the trial.

Sixth: As a result of the said injuries, the plaintiff has suffered great pain of body and anguish of mind, lost a great deal of time from his usual work, incurred medical and hospital expenses, and has suffered and will suffer other damages as will be shown at the trial, all in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

Seventh: This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of ONE MILLION (\$1,000,000.00) DOLLARS together with costs and interest.

COUNT II

First: The plaintiff reiterates all the allegations set forth in paragraphs "First", "Second", "Third" and "Fourth" of Count I.

Second: The injuries sustained by the plaintiff were due to no fault of his, but were caused by the unseaworthiness of the defendant's vessel.

Third: As a result of the said injuries, the plaintiff has suffered great pain of body and anguish of mind, lost a great deal of time from his usual work, incurred medical and hospital expenses, and has suffered and will suffer other damages as will be shown at the trial, all in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

Fourth: This cause of action is brought under the General Maritime Law for Unseaworthiness and is for the same cause of action as Count I.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of ONE MILLION (\$1,000,000.00) DOLLARS together with costs and interest.

COUNT III

First: The plaintiff reiterates all the allegations set forth in paragraphs "First", "Second", "Third" and "Fourth" of Count I.

Second: As a result of his injuries, the plaintiff incurred expenses for his maintenance and cure and will continue to do so all to his damage in the sum of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS

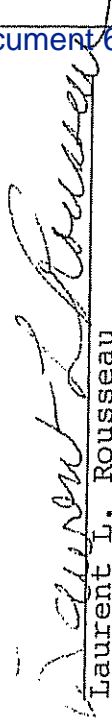
WHEREFORE, the plaintiff demands judgment against the defendant in the sum of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS together with costs and interest; and, in addition, an award for attorney's fees incurred by the defendant's wilful and persistent failure to make prompt payment of maintenance and cure during the period of the plaintiff's disability.

The plaintiff hereby demands a trial by jury on all the issues raised in Counts I, II and III.

By his attorneys,



Michaël B. Latti
Latti Associates
95 Commercial Wharf
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Tel: (617) 523-1000



Laurent L. Rousseau
Moore, Virgadamo & Lynch, Ltd.
112 Bellevue Avenue
Newport, Rhode Island 02840

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DENNIS J. DIMON)

vs.)

C.A. 81-0063

JENNY C., INC.)

PROCEEDINGS HELD ON MAY 3, 1983 IN THE ABOVE-CAPTIONED CASE
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE
ISLAND BEFORE SENIOR JUDGE RAYMOND J. PETTINE.

APPEARANCES:

ROGER E. HUGHES, JR., ESQUIRE-----FOR THE PLAINTIFF

GUY WELLS, ESQUIRE-----FOR THE DEFENDANT

W. SLATER ALLEN, ESQUIRE

JEROME B. SPUNT, ESQUIRE

MORNING SESSION, MAY 3, 1983

THE COURT: I realize the plaintiff is not here, but I have such an exacting schedule today, I just got to keep on time, or otherwise, everything's going to fall all along the line. So, I think we better just go ahead. All right, Mr. Decof, would you mind taking the stand and giving a report to the Court please?

MR. DECOF: Yes, your Honor.

THE COURT: We may have to have this typed.

L E O N A R D D E C O F was duly sworn.

THE COURT: All right. Would you be kind enough to trace the history of this case, as you understand it, starting with my first contact with you and placing it on the record?

MR. DECOF: Yes, your Honor. On April 20, 1983 I received a telephone call from Senior Judge Pettine asking me if I would be willing to serve as a guardian ad litem in a case which was somewhat disturbing to him. He told me basically that the case was an admiralty case, a Jones Act case, in which the plaintiff was a seaman who got injured, had lost an eye, that he had received a verdict which totaled more than \$700,000 before a jury, that the parties had agreed to a settlement, and that at a hearing before the Court, the plaintiff responded to questioning from his attorney as to whether or not he

1 understood he would have no more right of action against
2 anyone, if he accepted the settlement, but that when the
3 Court put some questions to him, he failed to understand
4 the questions or failed to reply to them in a way which
5 showed that he understood and more disturbing, informed
6 the Court that he was unable to read. He couldn't read
7 the release, and because he was unable to read, the Court
8 felt that a guardian ad litem should be appointed to
9 report back to the Court as to whether or not this
10 plaintiff was capable of understanding the consequences
11 of the settlement and asked me if I would be willing to
12 undertake this task.

13 I instructed the Court that I had one matter pending
14 with one of the attorneys involved. I didn't know if it
15 would be a conflict or not, and that I would discuss that
16 with the attorney involved, see if he had any objection.
17 And I did. I discussed it with the attorney involved.
18 He had no objection. He felt there was no conflict. I
19 felt there was no conflict. It was just a matter where
20 we were on opposite sides of the case; and I, therefore,
21 instructed the Court that I would be willing to undertake
22 this task. My understanding was that none of the
23 attorneys had any objection to my appointment as guardian
24 ad litem; and I, therefore, told Judge Pettine that I
25 would undertake this task.

1 Do you want me to continue further, Judge?

2 THE COURT: Yes.

3 MR. DECOF: Following that, on April - I informed
4 the Court on April 22, 1983 that I would undertake -
5 accept the Court's appointment as guardian. On April 25,
6 1983, I held my first conference with the attorneys
7 involved, Roger Hughes, Slater Allen, Guy Wells, and
8 with the plaintiff, Dennis Dimon, his wife, Cathy Dimon,
9 and his mother, Mrs. Louis Dimon.

10 I outlined to all of the parties, all of the
11 attorneys, what I understood my function to be, that my
12 function was to review the file, to review the basic
13 facts of the case, and to assess the posture of the
14 case so that I could inform the plaintiff of all of the
15 ramifications of the settlement and determine that he
16 understood what he was doing, if he agreed to accept the
17 settlement.

18 In order to be able to do this, I instructed all
19 the parties that it was not my function to evaluate the
20 case. It had not yet been heard on the motion for new
21 trial or on the defendant's motion to limit liability
22 under Section 183 of the 46 U.S. Code. But I told all
23 the parties it was not my function to evaluate the case,
24 but I would inform the plaintiff of all of the various
25 options, and I had to know the background of everything

1 that was happening so that I could make sure he was aware
2 of all of the ramifications. I accordingly --

3 THE COURT: What's on your mind, Mr. Allen?

4 MR. ALLEN: Your Honor, may the record now show
5 that the plaintiff is in court?

6 THE COURT: Yes. All right.

7 MR. DECOF: I accordingly did some research on
8 46 U.S. Code 688 and 46 U.S. Code 183. After the first
9 conference that I had, all of the parties understood the
10 position that I was in, and the plaintiff understood.
11 I was careful to inform the plaintiff that the Court
12 wanted me to do this, to make sure that he was protected,
13 and that he understood the nature, the full nature, of
14 everything that he was doing.

15 Subsequent to that, I requested the following
16 documents from the attorneys, and I did receive all
17 these documents, and I did review them: The complaint
18 in the case, the answer in the case, the interrogatories
19 to the jury, the medical reports concerning the plaintiff,
20 the deposition of Dr. Levin who was the plaintiff's
21 opthamologist, the insurance policies of the Kemper and
22 the Home, the expenditures of the Home Insurance Company
23 for maintenance, counsel fees, and so forth itemized,
24 financial statements of the vessel the Jenny C, the
25 school records of the plaintiff, the psychological reports

1 of the plaintiff, the appraisal of the Jenny C, the
2 structured settlement proposal, the general releases,
3 the application for annuity which was made for the
4 plaintiff, and I'll explain all these, and the release
5 of the defendant, Jenny C, from the notice provisions of
6 the plaintiff with reference to seizure of the vessel.
7 Plaintiff's attorneys had properly filed a notice which
8 prevented the Jenny C being sold so that it could be
9 seized to satisfy a judgment, if that became necessary.

10 I did receive all of these documents, and I reviewed
11 them all at length. I also reviewed and researched the
12 plaintiff's and defendant's memorandum concerning the
13 motion to limit liability of the defendants under 46 U.S.
14 Code 183 (a), and I did this not so that I could make
15 a decision on it, but so that I could inform the plaintiff
16 of the significance of it, and I came to an opinion
17 myself as to whether or not the limit of liability
18 would - whether the defendants would be successful.

19 In researching this, I did determine that the
20 defendants properly and timely set this up in their
21 answer so that defense wasn't necessary, but my opinion
22 was, and I informed the plaintiff of this later on,
23 that the plaintiff would probably prevail on this issue
24 because I felt that under 183 (a) there was privity or
25 knowledge in the sense that under the cases, Coryell

1 v. Phillips And Peace and various other cases, the Clevedo
2 and especially the China Union Lines case, that the
3 condition that the plaintiff complained of which
4 made the vessel unseaworthy was something which the
5 owner knew about or if he had inspected properly
6 would have found out.

7 I state this because I want to inform the Court
8 that I informed the plaintiff that I thought he would
9 prevail on this, and he understood this, and he still
10 wants to take the settlement.

11 Now, following my research I had further conferences
12 with the various attorneys, and I had a meeting, another
13 meeting in my office on April 28, 1983 with Dennis Dimon,
14 the plaintiff, Cathy Dimon, his wife, his mother,
15 Mrs. Dimon, and Roger Hughes, his attorney. In the
16 intervening days, I had determined what the present value
17 of the structured settlement was by consultations with
18 actuaries, and I had also determined the availability of
19 annuity policies. The settlement, as it was agreed upon,
20 provided for a payment, a cash payment, of \$250,000; and
21 in addition to that, a structured settlement of \$1450.45
22 per month guaranteed for 20 years but which would continue
23 for the life of the plaintiff. The plaintiff, by the
24 way, was born on December 9, 1959. His life expectancy
25 is 49.7 years, and he is married, and he has two children.

1 Now, this structured settlement would -- The structured
2 payments would increase by three percent each year, and
3 I instructed the plaintiff in the second conference that
4 we had that this three percent per year was not - did not
5 keep up with the cost of living index which ordinarily
6 raises seven percent per year. He understood this, and
7 his mother, who is an intelligent woman, understood it,
8 and in fact, she immediately replied to me, but that
9 they had the advantage that there would be no income tax
10 paid, and all this money he received would be tax free.

11 At any rate, in - I questioned Mr. Hughes carefully
12 about the present value of this structured portion of
13 the settlement because there are many different present
14 values. I know from my experience that different
15 discount rates can be used and different companies will
16 give different amounts for the same amount of money.
17 Mr. Hughes had told me that when the settlement was
18 originally offered, I think he acted with care and expertise
19 by the way in this matter, when the - or his office
20 did, when the settlement was originally offered, the
21 structured settlement, Mr. Hughes asked the defendants
22 what it was costing them to pay for this structured
23 settlement, and they told him \$175,000. He then asked
24 that they allow him the \$175,000, and his office would
25 purchase an annuity policy for the plaintiff on the market

1 at the best rate that they could get it; and I checked out
2 the annuity policy and found that this is a very solid
3 and good return for \$175,000 with reference to the
4 stature of the company that's involved. I did find out,
5 and I instructed the plaintiff and his wife and mother
6 and Mr. Hughes, that it was possible to get a little bit
7 higher payments for the same \$175,000, as a matter of
8 fact, rather than \$1450.45 per month for the first year,
9 they could possibly get payments of up to as high as
10 \$1550 a month but that this - these would be with a
11 company that was not quite as highly rated as the company
12 that's being used. They understood this, and their
13 choice was to have the security of the company that was
14 that was used.

15 And so, the opinion that I came to, after consul-
16 tations with the experts, was that the \$175,000 was the
17 present value, a fair present value, of the settlement,
18 the structured portion of the settlement, and that the
19 annuity purchased for it was a good solid annuity with
20 a solid company at market rates.

21 Now, I instructed the plaintiff and his wife and
22 mother when we met with them that the verdict was \$710,000,
23 and he understood that, the contributory negligence was
24 found to be - comparative negligence, 12 and 1/2 percent
25 with 8 and 1/2 percent interest for two years. The total

1 came to \$720,650. The -- I determined from the insurance
2 policies from Mr. Allen and from Mr. Wells that there
3 were two insurance companies involved here. The Home
4 Indemnity which was the primary carrier had originally
5 \$100,000 coverage, and under the provisions of the policy,
6 they had paid certain payments out for maintenance of
7 the plaintiff and for attorneys' fees and so forth which
8 brought - which under the policy could be deducted from
9 their coverage, and therefore, brought the amount that
10 they had available to contribute to the settlement down
11 to roughly \$76,000.

12 The -- Mr. Allen -- That was the Home Indemnity.
13 And Mr. Allen's company, the American Motors, Kemper,
14 had a limit of liability of \$400,000. So, between the
15 two insurance companies, there was \$476,000 available
16 for contribution to the settlement.

17 I also requested financial statements concerning
18 the defendant, Jenny C, so that I could advise the
19 plaintiff as to his possibility of collecting any excess
20 against the defendant. And Mr. Spunt who represents the
21 Jenny C Incorporated, which is a Rhode Island corporation,
22 furnished me financial statement and a certificate of
23 his that that - this was an accurate financial statement.
24 As a matter of fact, he furnished me a - copies of the
25 corporate tax return of the corporation, Jenny C

1 Corporation, which revealed that the only asset of the
2 corporation was this vessel; and the vessel, I also asked
3 for and received an appraisal by a maritime expert of
4 the value of this vessel, and the value was some \$105,000.

5 The tax -- I'm sorry. I thought I heard something.
6 The tax return of the defendant, Jenny C, showed that
7 this vessel was carried on the books at about -if you give
8 me one moment.

9 (P A U S E)

10 The tax return indicated - corporate tax return of
11 the Jenny C Inc. on schedule L indicated that the
12 depreciable asset which was the vessel was carried on
13 the books at \$105,855, and less accumulated depreciation
14 carried on the books at \$62,705. I advised the
15 defendant - rather, the plaintiff of this; and in our
16 conference, I advised the plaintiff also of the
17 supplementary proceedings process and what would happen
18 if he sustained his judgment through appeal and proceeded
19 to try to get execution against the vessel. The plaintiff
20 very promptly stated to me that he didn't want to go
21 against the owner of the vessel who was a Mr. Gary
22 Champlin. He said he was very friendly with the Champlin
23 family. They've been very nice to him, and he said - I
24 can quote him verbatim, he wouldn't want to take away
25 anybody's livelihood, and he was very strong about this.

1 I discussed the plaintiff's medical history at
2 length with him and his personal history. He went to
3 the South Rose Elementary School to the sixth grade. He
4 went to South Kingstown Junior High School to the eighth
5 grade at which time he left, and he went to work. His
6 subjects were shop, woodworking, machine shop, so forth,
7 English, Science, Math. He failed everything in the
8 eighth grade excepting Mathematics, and he stated to me
9 that he got an A in Math. He couldn't pass anything
10 which required reading because he was unable to read.

11 I asked from his mother his psychological records,
12 and she presented me with this folder which have rather
13 voluminous records of psychological testing and reports
14 by the South Kingstown School Department, by Dr. Denhoff
15 of the Child Development Center, by Madeline Sullivan
16 who's a school psychologist, there are various educational
17 evaluations, various test forms. And I reviewed these.
18 These revealed that the plaintiff, Dennis Dimon, has
19 average intelligence. His I.Q. on a verbal scale was 87
20 which is dull normal. His -- On a performance scale,
21 his I.Q. was 110 which is high average. And on his
22 overall full scale I.Q. was 98 which is listed as average.
23 And all of the psychologists and doctors state that it
24 is average.

25 Dr. Denhoff found that the plaintiff had a cerebral

1 dysfunction and integrative language disturbance.
2 Various other psychologists have found things in this area
3 which would mean he had a perceptual handicap. His
4 mother has stated to me, although the records don't
5 state this in these words, but his mother has stated to
6 me that when she took him to the University of Rhode
7 Island for testing, they told her that he had borderline
8 dyslexia. And the sum and substance of all of these
9 reports were that he is a person who has average intel-
10 ligence but has a dysfunction with reference to reading,
11 and he has not been able to learn to read, and that's
12 why he gave so much concern to this Court.

13 I did find in talking with him that he understood
14 readily the things that I said to him; and as he was -
15 he was much better than average in Mathematics as his
16 school records show.

17 Now, when I had the conference with the plaintiff,
18 his mother, and his - and his wife, I spoke with him
19 first while the attorney was present, and then I asked
20 the attorney to leave, and I told everybody that I wanted
21 to be able to state to the Court that I talked with the
22 plaintiff and his mother and his wife outside the
23 presence of his attorney so that he could reply to my
24 questions with no pressure, with no fear of embarrassing
25 anybody. I asked him if he was satisfied with the

1 services that the attorneys performed, and he said that
2 he was. I asked him if he had any complaints or any
3 questions that he wanted to raise with me. At this time,
4 his mother had one question. She was of the understanding
5 that after the settlement was made, that the insurance
6 company would still pay for some cosmetic surgery to
7 Dennis' left eye. I called in Mr. Hughes, and he stated
8 categorically this was not so, that once this was done,
9 there was no more comeback against the company. I --
10 Dennis stated that he understood this. I told him that
11 from what I had gathered this surgery could cost five to
12 \$10,000. Asked him if he understood this. He said he
13 did, and he still wanted to go forward with the settlement.

14 Again, speaking with him outside the presence of
15 his attorney, I discussed the settlement sheet, and the
16 attorney's fees. Now, the plaintiff had originally
17 signed an agreement with the attorney's firm for a
18 one-third contingent fee. And by the way, I asked why
19 this firm in Boston was selected, and the plaintiff's
20 mother told me that she had - she looked for an admiralty
21 firm, a firm that specializes in admiralty. She talked
22 with a number of people in the area who had cases, found
23 out that this was a good firm. I say this to the Court
24 because it was a sophisticated choice that was made.
25 This is an admiralty firm. I know them to specialize in

1 this, and they're very familiar with the admiralty work.

2 The one-third contingency fee had been agreed to,
3 and this fee would have come out to a little bit more
4 than the \$141,485.47 that the attorneys are charging.
5 But they had agreed with Dennis that he would receive
6 out of the \$250,000 in cash \$100,000. So, they modified
7 their fee down by several hundred dollars in order to
8 allow \$100,000 balance to come to the plaintiff. So
9 that of the \$250,000 up front, once the attorneys'
10 costs are reimbursed to them for medical records,
11 depositions, and witness fees and so forth, and these
12 costs were quite modest, I thought, for a case of this
13 size, and Dr. Levin's bills were paid, and the attorney's
14 fees of \$141,485.47 which were modified down from
15 \$141,666.66 were deducted, the total bills and expenses
16 came to \$150,000, and the plaintiff will receive \$100,000
17 in cash. Although it has no part of this case, the
18 plaintiff understands that there is an IRS lien of
19 \$4679.35 which he will have to pay from his proceeds
20 which will bring his proceeds down to \$95,320.65.

21 I advised the plaintiff and his family of the pros
22 and cons. I told them that they had a judgment in excess
23 of \$700,000, that once the settlement of \$425,000 was
24 accepted, there would be no comeback whether there were
25 further hospitalizations or whatever. I discussed with

1 the plaintiff Dr. Levin's resume of his condition which
2 states that, in effect, that he has a tearing eye which
3 will always be subject to infection, that he will need
4 one or two more operations, that he has some problems
5 with depth perception which could make it difficult or
6 dangerous to work with sharp objects at close range; and
7 asked him how he was doing. He told me he has been
8 working on another vessel since the accident, and he
9 intends to continue working as a fisherman.

10 I told him that there would be a hearing in which
11 Judge Watson would decide whether or not the liability
12 in this case would be limited to the value of the vessel,
13 and that although I hadn't researched it as carefully
14 as I'm sure the Judge would, that my opinion, after my
15 research, was that he would prevail on this because of
16 what I said before, the privity or knowledge that could
17 be attributed to the owner of the vessel.

18 I also told him what the appeal process was. I
19 advised him, in my opinion, as to how long an appeal
20 would take before the First Circuit, and the outside
21 possibility of appeal to the United States Supreme Court.

22 The main thing I want to state to the Court is
23 that he understood what I was saying to him, and I took
24 care to point out the down side or the dark side of all
25 the settlement so that he could make an informed judgment,

1 and he told me that this structured settlement is more
2 money than he has ever earned as a fisherman, and he
3 will still be able to work as a fisherman. I asked him
4 what he was going to do with the \$100,000, and he stated
5 to me that he was going to buy a house for himself and
6 his family, he was going to make a modest down payment,
7 that he had a modest house near the University of Rhode
8 Island he was going to buy for \$77,000, he was going
9 to make a small down payment, and get a mortgage and put
10 the rest of it in the bank. He also wanted very much
11 the annuity because that would be something that would
12 keep coming to him and would be a guarantee against his
13 spending the money in an improvident way.

14 The earnings that he had made as a fisherman
15 reported on his income tax in 1980 were roughly \$11,000,
16 in 1979 roughly \$8,000, and in 1982 roughly \$12,000. So,
17 the amount he is receiving on the settlement is more than
18 he has ever earned as a fisherman.

19 I went over the copy of the settlement sheet with
20 the plaintiff in detail, and he told me he had already
21 gone over it with his attorneys, and he understood it
22 and was satisfied with all the expenses and the legal
23 fees.

24 I determined one other thing, your Honor, well,
25 several other things, but what's important here is I

1 asked about whether or not there were any hospital liens,
2 Blue Cross liens, or subrogation of any kind which would
3 take away from the amount of money that would be coming
4 to the plaintiff; and I determined that there is no Blue
5 Cross, there is no hospitalization, there's no subrogation
6 of any kind so that this sum of \$95,320.65 he will have
7 net to him after he pays the Internal Revenue lien.

8 One final thing I found out from Mr. Hughes that
9 the price or the terms of this annuity which he has
10 gotten a commitment for will change on May 6, 1983. We
11 can't tell whether the terms will be better or they will
12 be worse. The -- Mr. Hughes got an opinion from the
13 insurance people that they will probably be worse. This
14 is because of the fluctuating interest rates. But if
15 the contract -- excuse me. I think I said May 6, 1983.
16 If the contract is purchased on or before May 6, 1983,
17 then that amount that I have discussed with the Court
18 will be available.

19 In sum, your Honor, I did not attempt to advise
20 the plaintiff one way or another whether he should accept
21 this settlement. The plaintiff is an adult. I understood
22 my function to be to determine whether or not he understood
23 the terms of the settlement. I think that I exercised
24 an excess of caution and went maybe farther than I had
25 to, but I wanted to do this, to go into the plaintiff's

1 background, to go into the law of the case so that I
2 could tell him what, in my opinion, would be all the
3 downside risks of the settlement and make sure that he
4 understood these; and although I wasn't in any attempt
5 trying to evaluate the prospects on appeal, I did want
6 to tell him what could happen, that he could prevail on
7 the motion to limit liability, that he could prevail on
8 the motion - I thought he probably would prevail on that,
9 that he could prevail on the motion for new trial, that
10 he could prevail on appeal, and he could come out with a
11 judgment in excess of \$700,000 plus accumulated interest;
12 and he understood this. I also told him the possibilities
13 on the other side. The -- That -- And if he did want -
14 prevail on his judgment, that all he could get from the
15 companies would be some \$476,000 and would then have to
16 proceed against the corporation the vessel at forced
17 sale, might bring anywhere from fifty to \$100,000. He
18 would still come up short.

19 But as I said, he was very adamant about the fact
20 that he did not want to go against the corporation. He
21 did not want to deprive Mr. Champlin of his right to earn
22 a living. And the bottom line is that, in my opinion,
23 he understood the things that I was saying to him despite
24 the fact that he has this reading disability and cannot
25 read - can't read the releases or whatever. He is aware

1 of what's happening, and it is his choice and his free
2 choice to accept this settlement.

3 THE COURT: Any questions of Mr. Decof?

4 MR. ALLEN: No, your Honor.

5 MR. HUGHES: No, your Honor.

6 THE COURT: All right, no questions. Let me say
7 this, Mr. Decof, I certainly appreciate what you've
8 done for this Court. I must be candid and say I didn't
9 quite know what my jurisdiction was in this matter.
10 Counsel requested that I take it upon myself to evaluate
11 the settlement offer, and I really still don't know
12 whether that's within the jurisdiction of the Court; but
13 I've assumed the responsibility for whatever it's worth.

14 To begin with, I place on the record I consider
15 the report that you have just rendered an exhaustive
16 report detailing every element of the case which was
17 done in a highly professional manner and could only be
18 done of a man of your caliber and your experience in
19 this area of the law. Certainly, I think we ought to
20 place on the record that Mr. Decof is a leading member
21 of the Rhode Island Bar and who has, in addition, an
22 enviable reputation that extends well beyond the State.
23 It would not be inappropriate for me to ask you to submit
24 to the Court - I don't want to give you added work, but
25 if you have one, I would think you have one all made up,

1 a curriculum vitae of yours that's all typed. I would
2 like to --

3 MR. DECOF: Yes, your Honor, be happy to do that.

4 THE COURT: I would like to file your curriculum
5 vitae with the records of this case so that if it's
6 ever reviewed, they'll know the kind of person who has
7 rendered this report.

8 Now, also, I want to straighten out your fee at
9 this time. Are you prepared to state what your fee is?

10 MR. DECOF: Yes, your Honor. I notified the parties
11 that the Court had instructed me to present a bill for
12 my services in rendering this report, and my original
13 understanding was that this would be paid by the
14 plaintiff. However, Mr. Allen and Mr. Wells advised
15 that their insurance companies will pay this fee so that
16 the plaintiff will - will not have any more money coming
17 out of his area of settlement. I told Mr. Allen roughly
18 what my fee would be last Friday. But I have prepared
19 a bill which did not include this morning, but it came
20 to 18.5 hours at \$150 an hour which is, I think, a
21 reasonable fee, and this Court has held to be a reason-
22 able fee. It's less than I ordinarily charge per hour,
23 which comes to \$2775.

24 THE COURT: Okay.

25 MR. DECOF: We have another hour that came here.

1 I'm not going to make an issue out of that.

2 THE COURT: Well, since they asked for this hearing,
3 I feel at liberty to say I order that that fee be paid
4 and be part of this order of the Court; and I assume
5 that will be paid in 48 hours, and not 48 months.

6 MR. ALLEN: Your Honor, probably take about a week
7 to get it back from New York.

8 THE COURT: Well, let's say within one week, all
9 right? All right, I feel every avenue has been explored
10 to insure that this plaintiff has the capacity and does
11 indeed understand this settlement. Certainly, we can
12 say that he's made an informed judgment to accept the
13 offer; and as far as the Court is concerned, I can do no
14 more than say he apparently knows what he is doing, and
15 which is about as far as the Court can go. I do not
16 believe you expected the Court to go any further than that.
17 Am I correct?

18 MR. ALLEN: Yes, your Honor.

19 THE COURT: Okay. I might just add that there was
20 some thought originally when I first saw this man as to
21 whether or not he had the capacity to handle \$100,000 in
22 cash money which would be turned over to him. That
23 certainly is a lot of money. I do not believe it's
24 within the province of this Court to try - even attempt
25 to impress a trust upon it. He knows what's he's doing.

1 He's an adult. He's married, and I can only hope that
2 they use discretion because once that money's gone, it's
3 gone forever. It better be used wisely and carefully.

4 All right, I thank you very much, and I thank you
5 again, Mr. Decof. I certainly appreciate the responsi-
6 bility that you assumed, and I must say again as usual
7 you did it magnificently.

8 MR. DECOF: Thank you, your Honor.

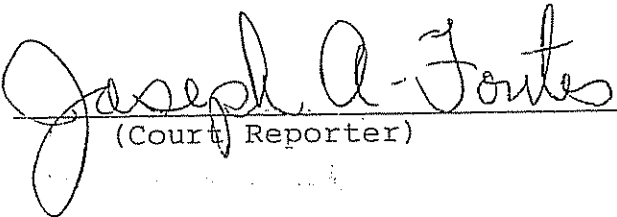
9 (A D J O U R N E D)

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I, Joseph A. Fontes, Official Court Reporter for the United States District Court for the District of Rhode Island, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.


(Court Reporter)

CERTIFIED COPY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DENNIS DIMON,

Plaintiff,

-against-

MET LIFE INSURANCE CO., KEMPER INSURANCE
CO., MORGAN STANLEY D.W., INC., MICHAEL B.
LATTI, LATTI ASSOCIATES and LATTI &
ANDERSON, LLP

Defendants.

May 10, 2006

10:00 a.m.

Deposition of Met Life Insurance Co.
by Barbara Fasman, 30(b)(6) witness, held at
the offices of Met Life, One Met life Plaza,
27-01 Queens Plaza North, Long Island City,
New York, before Vicky Galitsis, a Certified
Shorthand Reporter and Notary Public of the
State of New York.

GREENHOUSE REPORTING, INC.
363 Seventh Avenue - 20th Floor
New York, New York 10001
(212) 279-5108

1 B. Fasman

2 Charter Security was acquired by or in some
3 other fashion became a part of Met Life?

4 MR. CIAPCIAK: Sue, perhaps I can
5 get to the point here.

6 MS. McQUAY: Sure.

7 MR. CIAPCIAK: If you're asking
8 whether Met Life is responsible legally
9 for anything that Charter might have
10 done or didn't do in this case, Met
11 Life is responsible.

12 MS. McQUAY: I won't belabor the
13 issue then.

14 MR. CIAPCIAK: Great.

15 Q. Ms. Fasman, directing your
16 attention to Exhibit 1, at the top of the
17 document there appears a number 83A08153, do
18 you see that?

19 A. Yes.

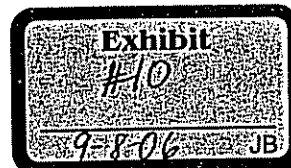
20 Q. To what does that refer?

21 A. To my understanding that refers
22 to the number of the annuity that Charter
23 sold, the contract number.

24 Q. Okay. How did you derive that
25 understanding?

GENERAL RELEASE

Dennis Jay Dimon, now or formerly of the Town of Charlestown, State of Rhode Island, in consideration of the payment of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars and the establishment of a fully paid annuity contract for my benefit with Charter Life Insurance Company, to pay me One Thousand Four Hundred Fifty and No/100 (\$1,450.00) Dollars per month for one year following the execution of that contract and thereafter, such monthly sum increased at the rate of three (3%) percent per year, compounded annually, to be paid to me during the term of my life, and in no event for less than twenty (20) years, the receipt whereof is hereby acknowledged, do hereby remise, release, and quitclaim unto Jenny C. Inc. all and any such claims, rights, choses, and actions of every manner and kind which I have ever had, which I have now, or which I may have in the future from the beginning of the world to the date of these presents more specifically, without limiting the generality hereof all and every claim arising out of an injury suffered by me aboard the fishing vessel Jenny C. owned by Jenny C. Inc. on January 24, 1981, and all my rights, claims, and choses asserted or involved in the complaint or libel filed in the United States District Court for the District of Rhode Island under the name and style Dennis Jay Dimon vs. Jenny C. Inc., civil action No. 81-0063.



K-0063

I understand the nature and extent of my injury and that I will never be cured. I understand that this is a full and final settlement. I further certify that this release is fully understood by me and is entirely satisfactory.

IN WITNESS WHEREOF, Dennis Jay Dimon has set his hand this 19th day of April, 1983.

THIS IS A FINAL RELEASE.

Dennis Jay Dimon
Dennis Jay Dimon

On April 19, 1983 I read the above two pages to the plaintiff and explained its contents to him.

Roger E. Hughes
LATTI ASSOCIATES

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 DENNIS DIMON,)

6 Plaintiffs,)

7 vs.)

8 METROPOLITAN LIFE INSURANCE,)

KEMPER INSURANCE COMPANY,)

9 MORGAN STANLEY DW, INC.,)

MICHAEL B. LATTI, LATTI)

10 ASSOCIATES, and LATTI &)

ANDERSON LLP,)

11 Defendants.)
12
13

14 The telephonic deposition of WILLIAM R.
15 MENSIE, called by the Defendant Metropolitan Life
16 Insurance for examination, pursuant to Notice, and
17 pursuant to the Rules of Civil Procedure for the United
18 States District Courts pertaining to the taking of
19 depositions, taken before Joanne M. Brogan, a Certified
20 Shorthand Reporter and a Notary Public in and for the
21 County of Cook and State of Illinois, at One Kemper
22 Drive, Long Grove, Illinois, on Thursday, 7th day of
23 September, 2006, at the hour of 9:00 o'clock a.m.
24

COPY

C.A. No: 05-11073 WGY

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1 asked for a copy of the settlement agreement?

2 A Yes.

3 Q Okay Does that lead you to believe, sir, that
4 there was some hard copy of a settlement agreement in the
5 Jenny C matter?

6 A Taking in its actual context of this
7 memorandum, yes, it does lead me to -- either that or the
8 fact that I have seen a hard copy of the settlement
9 agreement leads me to believe there was a settlement
10 agreement.

11 Q You have seen a hard copy of a settlement
12 agreement?

13 A I seem to recall having seen a settlement
14 agreement, yes.

15 Q Has that been produced by Kemper in this case?

16 A My understanding is yes.

17 Q Can you direct me to -- my attention to what
18 constitutes that settlement agreement among the documents
19 that Kemper has produced, which I believe are all in the
20 room with you?

21 MR O'DRISCOLL: Yes, they're in the room, Sue
22 Are you asking the witness now to go through the
23 documents?

24 MS McQUAY: If he believes that they contain
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1 I may be mistaken, but I'd like him to identify for me
2 what among these documents he believes constitutes the
3 settlement agreement.

4 MR O'DRISCOLL: The witness has in front of
5 him a document titled General Release

6 BY MS McQUAY:

7 Q All right Is it your testimony, sir, that the
8 document entitled General Release, which bears the Bates
9 stamp No. K-0063 and K-0064, constitutes the settlement
10 agreement?

11 MR O'DRISCOLL: I don't know that the witness
12 has testified to that

13 MS McQUAY: I'm asking him if that is his
14 testimony

15 THE WITNESS: This is the agreement that I'm
16 reading from the paragraph in the memorandum when asked
17 the question, this was the agreement that I recall asking
18 read.

19 BY MS McQUAY:

20 Q Did you see anything else in any of the Kemper
21 documents that you believe -- other than this general
22 release that you believe constituted the settlement
23 agreement?

24 A Not that I recall.

PRECISE REPORTING SERVICE, P.C.

23 Q And down further in the next paragraph he, Mr
24 Noe, goes on to say that Charter Security's counsel has
PRECISE REPORTING SERVICE, P C.

<p style="text-align: right;">Page 218</p> <p>1 Q It's your understanding or belief that when 2 there is a reference to a settlement agreement it is 3 referring to this general release, K-0063 to 0064; is 4 that correct? 5 A Looking back on it retrospectively, this is the 6 document I thought they were referring to, yes. 7 MS. McQUAY: Could we have this document, the 8 general release, marked as the next exhibit, please 9 (Exhibit No 10 was marked for 10 identification) 11 BY MS McQUAY: 12 Q In fact, sir, directing your attention to the 13 document produced by Kemper bearing the Bates stamp No 14 K-0007, would you place that document in front of you, 15 please 16 MR O'DRISCOLL: Mr. Mensie has the document in 17 front of him 18 BY MS McQUAY: 19 Q In fact that document reflects that Mr Noe was 20 asking that he be sent a copy of the settlement 21 agreement, does it not? 22 MR. O'DRISCOLL: Forgive me. I apologize 23 Exhibit 6, K-0125, is that what you're asking about now? 24 MS McQUAY: No, it's K-0007, K-7 PRECISE REPORTING SERVICE, P C</p>	<p style="text-align: right;">Page 220</p> <p>1 sent the proceedings. 2 Q Before Judge Pettine? 3 A Before Judge Pettine. Now, I don't recall if 4 within that document there was also settlement release 5 language. 6 Q Okay But am I correct in understanding that 7 you have seen nothing in any Kemper documents 8 constituting a settlement agreement other than the 9 general release and perhaps language within the 10 proceedings before Judge Pettine; is that correct? 11 A That's -- I'm sorry. That would be my 12 recollection at this time. 13 Q Okay Thank you, sir Now, going back to the 14 general release which has been marked as Exhibit 10, in 15 that general release Mr Dimon releases all of his claims 16 in the Jenny C matter, does he not? 17 A To the best of my understanding. That's 18 certainly what my understanding was, that there was an 19 intent to do. 20 Q And in return for releasing all of his claims 21 in the Jenny C matter, that general release recites the 22 fact that he was to receive \$250,000 cash payment, 23 correct? 24 A Correct. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 219</p> <p>1 MR O'DRISCOLL: Okay. Now we're on K-007 2 MS McQUAY: Yes. 3 BY MS McQUAY: 4 Q Do you have that document in front of you, sir? 5 MR O'DRISCOLL: Now he does. That's the first 6 time we referred to this today I believe. 7 MS McQUAY: All right 8 BY MS McQUAY: 9 Q In that Kemper document Mr Noe asked Ms Graci 10 to send him a copy of the settlement agreement, does he 11 not? 12 A Yes. 13 Q And down at the bottom of the document there's 14 a handwritten notation sent 7-26-83 release and 15 proceedings 5-3-83 before Judge Pettine, do you see that? 16 A Yes. 17 Q Do you see that, sir? 18 A Yes. 19 Q And does that further reinforce your belief 20 that the settlement agreement that is being referred to 21 in the Kemper documents is the general release? 22 A I'd like to -- well, in order to answer your 23 question the person who interpreted this memo, that Mary 24 Graci, not only did she send the release, but she also PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q And in addition he was to receive in return for 2 release of those claims a fully paid annuity contract for 3 his benefit with Charter Life Insurance Company to pay 4 him \$1,450 per month for one year following the execution 5 of that contract and thereafter such monthly sum 6 increased at the rate of 3 percent per year, compounded 7 annually, to be paid to him during the term of his life 8 and in no event for less than 20 years, correct? 9 A Correct. 10 Q Was such an annuity contract issued and 11 provided to Kemper for Mr Dimon's benefit? 12 MR O'DRISCOLL: I'm sorry. I didn't get that 13 question, but if I could just ask Joanne to read it back 14 instead of asking you to 15 (Record read as follows: Was such an 16 annuity contract issued and provided 17 to Kemper for Mr Dimon's benefit?) 18 MR O'DRISCOLL: Provided to Kemper for 19 Mr. Dimon's benefit? 20 MS McQUAY: Yes. 21 MR O'DRISCOLL: I'll object to the question as 22 compound 23 BY MS McQUAY: 24 Q Mr Mensie? PRECISE REPORTING SERVICE, P C</p>

<p style="text-align: right;">Page 222</p> <p>1 MR. O'DRISCOLL: Well, if I may object to the 2 form of the question It's a compound question You're 3 asking at least two questions in there 4 THE WITNESS: To the extent that I understand 5 the question it was represented by Charter that the 6 monies that Kemper paid to Charter would comply with the 7 release requirements. 8 BY MS McQUAY: 9 Q And what form did Charter make that 10 representation? 11 A The distribution of at least what I could seem 12 to see was -- I seem to recall was there was actually a 13 policy that was issued. 14 Q That was my question: Did in fact Charter 15 issue a policy that conformed to the requirements that 16 resided here in the general release, Exhibit 10? 17 A Yes. 18 Q Okay And did Kemper receive a copy of that 19 policy? 20 A It seems -- yes. 21 Q All right And is that what you have referred 22 to and others have referred to from time to time as the, 23 quote, original policy issued by Charter? 24 A Yes. <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>	<p style="text-align: right;">Page 224</p> <p>1 you understand, Mr Mensie, that it is your testimony on 2 behalf of Kemper that this Exhibit 11 constituted an 3 annuity policy issued by Charter Security that comported 4 with requirements recited in the general release, Exhibit 5 10? 6 MR. O'DRISCOLL: May the witness review the 7 document first 8 MS McQUAY: Okay 9 MR. O'DRISCOLL: If you need the opportunity, 10 William 11 THE WITNESS: I believe this is a document I 12 reviewed previously and that it is in fact what my 13 understanding was looking back on the record as the 14 policy that was issued by Charter to comply with the 15 requirements of the general release 16 BY MS McQUAY: 17 Q And does in fact in your view -- this annuity 18 policy that was issued by Charter, did it in fact meet 19 the requirements recited in the general release? 20 A I seem to recall having read that it did, and 21 in fact it says that: "Monthly payments in the amount of 22 \$1,450.45, increasing 3 percent annually, commencing on 23 June 6, 1983, for a period 240 months certain and life 24 thereafter" is contained in the document. <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>
<p style="text-align: right;">Page 223</p> <p>1 Q Is a copy of that original policy issued by 2 Charter among the documents that Kemper has produced? 3 A I believe they have been produced, yes. 4 Q Would you identify, please, for the record what 5 you believe to be the annuity policy issued by Charter 6 that complied with requirements set forth in the general 7 release? 8 MR. O'DRISCOLL: The witness has in front of 9 him a document marked K-0010 10 BY MS McQUAY: 11 Q And is that a multiple page document? 12 A Yes. 13 Q And what is the end -- would you give us the 14 range of Bates stamp numbers comprising that document, 15 please 16 A Yes, I will. One moment, please. It's K-0010 17 through K-0020. 18 MS McQUAY: Would you mark that as Exhibit 11, 19 please 20 (Exhibit No 11 was marked for 21 identification) 22 THE REPORTER: Okay, it's marked 23 BY MS McQUAY: 24 Q And just so the record is entirely clear, do <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>	<p style="text-align: right;">Page 225</p> <p>1 Q Are you directing your attention in particular 2 to page K-0019 of the annuity policy issued by Charter? 3 A Yes. 4 Q And therein it states up at the top, and I'm 5 quoting now: "The undersigned surrenders said policies 6 to the insurance company and concurrently herewith 7 revokes any beneficiary designation and any election of 8 settlement heretofore made under said policy"? 9 A Yes, it does read there. 10 Q And then it goes on to recite, as you have 11 read, that the payee, the primary payee, Dennis Dimon, is 12 to receive monthly payments in the amount of \$1,450.45, 13 increasing 3 percent annually, commencing on June 6, 14 1983, for a period of 240 months certain and life 15 thereafter? 16 A Yes. 17 Q Okay Now, directing your attention to page 18 K-0015 of Exhibit 11, that page sets forth various 19 settlement options, does it not? 20 A Yes. It's titled Settlement Options. 21 Q Do you see that, Mr Mensie? 22 A Yes. It's titled Settlement Options. 23 Q Yes. And on the page it lays out various 24 options; option 11 being limited payments Do you see <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>

<p style="text-align: right;">Page 238</p> <p>1 exhibits, and the witness has Exhibit 6 in front of him,</p> <p>2 Sue</p> <p>3 BY MS McQUAY:</p> <p>4 Q In Exhibit 6, sir, Mr Noe, this is November of</p> <p>5 1983, he says in his memo that he is now dealing with</p> <p>6 Charter Security's counsel in Jacksonville, Florida He</p> <p>7 has asked for a copy of the settlement agreement. Do you</p> <p>8 see that, sir?</p> <p>9 A Yes.</p> <p>10 Q Do you know -- well, strike that</p> <p>11 What was the nature of Mr. Noe's dealings</p> <p>12 with Charter Security's counsel in Jacksonville, Florida</p> <p>13 at that point?</p> <p>14 A As the memo outlines he was -- the counsel for</p> <p>15 Charter had requested a copy of the settlement agreement,</p> <p>16 and that's as far as I could glean from the information</p> <p>17 that I reviewed.</p> <p>18 Q Do you know what came from Mr Noe's dealings</p> <p>19 with Charter Security's counsel in Jacksonville, Florida?</p> <p>20 A I do not.</p> <p>21 Q Do you know what further transpired between</p> <p>22 them after November 8, 1983?</p> <p>23 A I don't recall seeing any further</p> <p>24 communications or any communications relative to counsel</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q Well, let me just ask it this way: Now, it was</p> <p>2 Kemper's position back in 1983, certainly as of November</p> <p>3 1983, that the policy issued by Charter was in fact what</p> <p>4 was required under the settlement agreement and in fact</p> <p>5 was a valid and enforceable contract, correct?</p> <p>6 A Yes.</p> <p>7 Q Has that continued to be Kemper's position</p> <p>8 today?</p> <p>9 A Yes.</p> <p>10 MS McQUAY: Thank you, sir I have nothing</p> <p>11 further</p> <p>12 MR DeWICK: This is Jed DeWick. I just have a</p> <p>13 couple if I may</p> <p>14 CROSS EXAMINATION</p> <p>15 BY MR DeWICK:</p> <p>16 Q Mr. Mensie, again my name is Jed DeWick I</p> <p>17 represent the Latti entities in this action.</p> <p>18 First of all, I believe you touched in</p> <p>19 general on this subject, but I just wanted to get it a</p> <p>20 little clearer on the record. You obviously were not</p> <p>21 with Kemper in 1983, correct?</p> <p>22 A Correct.</p> <p>23 Q And you were not personally involved with the</p> <p>24 settlement of this Dimon verse Jenny C matter, correct?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P C</p>
<p style="text-align: right;">Page 239</p> <p>1 in Jackson, Florida [sic].</p> <p>2 Q Are you able to describe what if any further</p> <p>3 steps Kemper took after this date, November 1983, to</p> <p>4 insure that the policy they had received from Charter</p> <p>5 would continue to be honored?</p> <p>6 A I couldn't -- I didn't see evidence of</p> <p>7 anything. I'm not sure that Kemper could have taken any</p> <p>8 other steps, but I didn't see anything that suggested</p> <p>9 that Mr. Noe or anyone else on Kemper's behalf had taken</p> <p>10 further steps.</p> <p>11 Q So as far as you are aware, after November</p> <p>12 1983, it just simply continued to be Kemper's position</p> <p>13 that the original policy issued was valid and enforceable</p> <p>14 and should be honored, correct?</p> <p>15 A That is correct.</p> <p>16 Q Now, you testified yesterday, because I wrote</p> <p>17 this down in my notes, you testified yesterday,</p> <p>18 Mr. Mensie, that you did not believe there was much of a</p> <p>19 dispute here. Could you explain that, please.</p> <p>20 MR. O'DRISCOLL: I'm sorry, Sue. Could you</p> <p>21 give more context to that?</p> <p>22 MS McQUAY: I'm not sure I can. Let's see if</p> <p>23 I can</p> <p>24 BY MS McQUAY:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P C</p>	<p style="text-align: right;">Page 241</p> <p>1 A Correct.</p> <p>2 Q And you were not involved in any aspect in the</p> <p>3 obtaining of the annuity that was part of that</p> <p>4 settlement, correct?</p> <p>5 A That's correct.</p> <p>6 Q So your knowledge of this entire matter is</p> <p>7 based in part upon your review of all the documents that</p> <p>8 have been produced in this litigation, correct?</p> <p>9 A That is correct.</p> <p>10 Q As well as in part based on your experience in</p> <p>11 the insurance industry?</p> <p>12 A Yes, sir.</p> <p>13 Q And as well as your knowledge in general of</p> <p>14 Kemper's policies and procedures, correct?</p> <p>15 A Correct.</p> <p>16 Q And you have not had any discussions with</p> <p>17 anyone who had firsthand knowledge of the underlying</p> <p>18 settlement agreement, correct?</p> <p>19 A That is correct.</p> <p>20 Q And you do not know of anyone that is still</p> <p>21 employed by Kemper who has such firsthand knowledge, do</p> <p>22 you?</p> <p>23 A I do not.</p> <p>24 Q Are you a lawyer, Mr. Mensie?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P C</p>

<p style="text-align: right;">Page 242</p> <p>1 A No.</p> <p>2 Q Do you have any legal training at all?</p> <p>3 A Other than as it relates to claim handling.</p> <p>4 Q Could you just expand on that What training</p> <p>5 do you have, legal training do you have, as it relates to</p> <p>6 claim handling?</p> <p>7 A A working knowledge of the law necessary to</p> <p>8 handle claims that I'm charged with handling.</p> <p>9 Q Is that the law of liability, if you could just</p> <p>10 be a little bit more --</p> <p>11 A Basic principles of -- basic legal principles</p> <p>12 and understanding of the process and systems.</p> <p>13 Q And when you say "basic legal principles,"</p> <p>14 again do you mean --</p> <p>15 A Principles of negligence, torts, contracts.</p> <p>16 Q Negligence, torts, contracts?</p> <p>17 A Negligence or torts, and I said contracts is</p> <p>18 what I said, an understanding of, you know, the parties</p> <p>19 of a contract.</p> <p>20 Q And so when you say you have a working</p> <p>21 knowledge of it, have you had specific training, or is</p> <p>22 this training you've acquired through performance of your</p> <p>23 job over the years?</p> <p>24 A Performance of the job.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q They are a part of the Kemper Group?</p> <p>2 A Yes.</p> <p>3 Q And the Kemper Group is not -- and correct me</p> <p>4 if I'm wrong obviously, the Kemper Group is not an entity</p> <p>5 unto itself, but it is a trade name under which certain</p> <p>6 entities operate; is that correct?</p> <p>7 A That is correct.</p> <p>8 Q So in your capacity here testifying on behalf</p> <p>9 of Kemper, are you also testifying on behalf of each</p> <p>10 insurance company insofar as they operate under the</p> <p>11 Kemper trade name?</p> <p>12 A With respect to American Motorists, yes.</p> <p>13 MR. DeWICK: Thank you very much I have</p> <p>14 nothing further</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. KEANE:</p> <p>17 Q Mr. Mensie, my name is Brian Keane I just</p> <p>18 have a few questions as well I represent the Plaintiff</p> <p>19 Dennis Dimon in this matter</p> <p>20 A Yes, sir.</p> <p>21 Q If I could have you look at Exhibit 11 Do you</p> <p>22 have that in front of you?</p> <p>23 MR. O'DRISCOLL: I'm just getting it for him,</p> <p>24 Brian</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P C</p>
<p style="text-align: right;">Page 243</p> <p>1 Q So there has been no formal training?</p> <p>2 A You know, I've attended training courses, I've</p> <p>3 attended continuing education courses and things of that</p> <p>4 nature over the years.</p> <p>5 Q And those courses dealt with what you spoke of,</p> <p>6 legal principles with respect to torts?</p> <p>7 A Yes, sir.</p> <p>8 Q When you testified earlier that Kemper had no</p> <p>9 involvement in obtaining the quote from Charter Life for</p> <p>10 the life annuity, again that is based on your review of</p> <p>11 all the documents in this litigation?</p> <p>12 A That's correct.</p> <p>13 Q So you have no firsthand knowledge that they</p> <p>14 had no such involvement; is that correct?</p> <p>15 A No independent knowledge, that is correct.</p> <p>16 Q In all your years of experience with annuities</p> <p>17 have you ever encountered an incident such as this one</p> <p>18 where an after annuity contract issued, the issuing</p> <p>19 company claimed that there had been a clerical error with</p> <p>20 regard to the terms?</p> <p>21 A No.</p> <p>22 Q You testified yesterday that American Motorists</p> <p>23 Company still exists?</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 245</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 BY MR. KEANE:</p> <p>3 Q I just wanted to follow up on some of the</p> <p>4 questions Attorney McQuay was asking you If you turn to</p> <p>5 page K-0015, it looks like Attorney McQuay was asking you</p> <p>6 questions about the highlighted and capital section "with</p> <p>7 certain period." Is it your understanding that that</p> <p>8 section of the settlement options falls under option 2,</p> <p>9 life income, down below on the left side?</p> <p>10 A Yes.</p> <p>11 Q And if you turn to K-0010 at the beginning of</p> <p>12 Exhibit 11, at about a quarter of the way down it says:</p> <p>13 Option 2 Life Income with a star. Do you see that?</p> <p>14 A Which paragraph are you referring to?</p> <p>15 Q It's about a quarter of the way down on the</p> <p>16 document. It's below the numbers, and it says: "Option</p> <p>17 2 Life Income" with a star</p> <p>18 A Yes, I see it.</p> <p>19 Q Now, does that relate to what's on page K-0015</p> <p>20 in regards to Option 2, life income?</p> <p>21 A I would think so. I don't see any other option</p> <p>22 2s in the policy.</p> <p>23 Q And therefore this policy issued by Charter</p> <p>24 Security Life would be for the life of the person for who</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P C</p>

NY



Charter Security Life Insurance Company (New York)
720 Fifth Avenue • New York, New York 10019

0 75	14	7 49	19	5 97	24
9 83	15	7 10	20	5 75	25

OPTION 2. LIFE INCOME*

We will pay a lifetime monthly income to the Annuitant if living on the Annuity Date. The basis for this amount of income is explained in this contract.

Unless you make an alternate election, we will make the first monthly payment on the Annuity Date; payments after the first will be on that same date of the month as long as the Annuitant lives. Unless you make an alternate election, we guarantee 120 monthly payments; they will be continued to the Beneficiary if the Annuitant dies before receiving them. Payments will be made by check to the Annuitant or Beneficiary. We reserve the right to require proof that the payee is living on payment dates.

We will pay the benefit explained in this contract if the Annuitant dies before the Annuity Date. It will be paid to the Beneficiary when we receive acceptable proof of death.

The Beneficiary and Owner are as named in the application if not later changed.

Notice of ten-day right to examine contract: This contract may be cancelled within ten days after its receipt. The steps to follow are:

Return the contract with a written notice to us or to the agent through whom you purchased the contract. If you return the contract directly to us, use the address of our Home Office shown on the top of this page. If return is through the agent, obtain a receipt.

We will return all payments made for this contract after we receive it. As soon as the contract is delivered or mailed to us, it will be deemed void from its beginning.

Read this contract carefully. It is a legal contract between you and us.

Secretary

President

SINGLE PREMIUM DEFERRED ANNUITY

Monthly Life Annuity With Ten Years Certain Payable At Annuity Date
Benefit in Event of Death is Payable Prior To Annuity Date
Optional Life Annuities at Annuity Date—Optional Annuity Date
Non-Participating

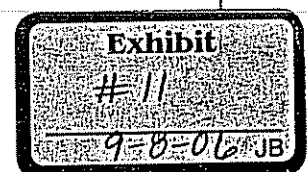


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NY

DEFINITIONS

This is what we mean when we use these words or phrases:

"We," "us" and "our" refer to Charter Security Life Insurance Company (New York).

"You" and "yours" refer to the Owner named in the application.

The "Accumulation Interest Rate" is the annual effective interest rate which we use to credit interest to the Single Premium less any Partial Surrenders.

The "Accumulation Value" is the value of the contract before the charge, if any, for withdrawing funds.

The "Annuitant" is the person who is to receive annuity payments.

The "Beneficiary" receives the benefits, if any, due at the Annuitant's death.

A "Contingent Owner," if named, becomes the Owner if the Annuitant survives the Owner.

"Contract Years" are measured from the Issue Date.

The "Declared Interest Rate" is the Accumulation Interest Rate which we declare and guarantee for the Effective Period.

The "Effective Period" is the period during which the Accumulation Value will accrue interest at the Declared Interest Rate.

The "Owner" owns and controls this contract.

A "Partial Surrender" is a surrender of part of the Accumulation Value.

The "Surrender Charge" is the charge for withdrawing funds. It is equal to the Surrender Charge Percentage times the amount of Accumulation Value surrendered. The Surrender Charge Percentages are shown on the Schedule Page. Refer to NONFORFEITURE PROVISIONS; the Surrender Charge applies only under certain conditions.

The "Surrender Interest Rate" is the Declared Interest Rate below which the Surrender Charge is waived for 60 days. Refer to NONFORFEITURE PROVISIONS.

The Surrender Value" is the Accumulation Value less the Surrender Charge.

"Survive" refers to the continued life of a person or legal existence of an entity other than a person.

GENERAL PROVISIONS

BASIS OF CONTRACT: This contract is issued on the basis of the application and receipt of the Single Premium payment in advance.

ENTIRE CONTRACT; CHANGES: This contract, the attached application, and any endorsements make up the entire contract. All statements in the application are representations and not warranties.

No agent can change this contract or waive any of its terms. Changes can be made only by written endorsement signed by one of our officers.

PREMIUM PAYMENT: The Single Premium payment for this contract was paid in advance. If the check or other instrument is not honored for payment, this contract is deemed void from the beginning.

ISSUE DATE: This contract takes effect on its Issue Date which is shown on the Schedule Page.

INCONTESTABILITY: This contract is incontestable from its issue date.

MISSTATEMENT OF AGE OR SEX: We will require proof of age before we make payments to the Annuitant or any Beneficiary. If age or sex is misstated, we will pay the amount due at the true age or sex. In case of age or sex correction after payments start, we will:

- (1) In case of underpayment, pay the full amount due the payee with the next payment due.
- (2) in case of overpayment, deduct the amount due us from future payments; deductions will be spread over the payment period.

K-0012

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GENERAL PROVISIONS

(Continued)

OWNERSHIP: You have all rights under this contract during the Annuitant's lifetime, subject to:

- (1) the rights of any assignee of record with us;
- (2) the rights of any irrevocable Beneficiary;
- (3) any restricted ownership endorsement;
- (4) the change of ownership provision.

CHANGE OF OWNERSHIP: During the Annuitant's lifetime, you may name a new Owner. If you are a natural person other than the Annuitant, you may name or change a Contingent Owner. A Contingent Owner becomes Owner only by surviving you.

Notice of the change must be sent to our Home Office; it must be signed and dated by you. We are not liable for any actions we take before we receive and file the notice at our Home Office.

Change of ownership:

- (1) voids any Contingent Ownership;
- (2) does not affect the Beneficiary.

ASSIGNMENT: You may assign all rights, privileges and benefits provided by this contract. We are not bound by an assignment until we receive and file a signed copy at our Home Office. We are not responsible for the validity of assignments.

BENEFICIARY: You may change the Beneficiary during the Annuitant's lifetime; an irrevocable Beneficiary may be changed only by that Beneficiary's written consent. Notice of the change must be sent to our Home Office; it must be signed and dated by you. It takes effect on the date it is signed. We are not liable for any actions we take before we receive and file the notice at our Home Office.

A Beneficiary's interest is effective if that Beneficiary:

- (1) survives the Annuitant by 15 days; or
- (2) survives until we receive proof of the Annuitant's death.

We will pay the proceeds in this order unless this contract is assigned at the time of the Annuitant's death:

- (1) We will pay the designated Beneficiaries who survive the Annuitant.
- (2) If no Beneficiary survives, we will pay the Annuitant's estate.

No Beneficiary can change your previous choice of a settlement option.

To the extent permitted by law, no payment we make will be subject to the claims of any creditors.

CONFORMANCE TO STATUTES: Any annuity, Surrender Value or benefit in event of death payable under this contract is not less than the minimum benefit required by any statute of the state in which this contract is delivered.

INTEREST RATES

DECLARED INTEREST RATE. We declare an Accumulation Interest Rate, and Effective Period, on the Issue Date. They are shown on the Schedule Page. Prior to the expiration of the Effective Period, we will declare a new Accumulation Interest Rate and Effective Period. We will notify you of declared Accumulation Interest Rates and effective periods in writing.

GUARANTEED INTEREST RATES: We guarantee that the Accumulation Interest Rates will be at least as great as the Guaranteed Interest Rates shown on the Schedule Page.

JOINT ANNUITANT

If you designate two persons as joint annuitants in the application, these rules will be in effect:

Definition: The term "Annuitant" means the joint annuitants or the survivor of them, as the case may be.

Annuity Date: The Annuity Date will be:

- (1) the Contract Anniversary following the 65th birthday of the older joint annuitant; or
- (2) ten years from the Issue Date if the issue age of the older joint annuitant is more than 55 Years; or
- (3) the date specified in the application.

Deferral of Annuity Date: The Annuity Date may not be deferred to a date beyond the 85th birthday of the older joint annuitant.

BENEFIT IN EVENT OF DEATH: We will not pay any benefit upon the death, before the Annuity Date, of the first of the joint annuitants to die. Instead, the contract will remain in force as to the surviving joint annuitant. If one joint annuitant dies before the Annuity Date, the latest permitted Annuity Date will become the 85th birthday of the remaining joint annuitant or, if later, ten years after the Issue Date. If both joint annuitants die before the Annuity Date, we will pay the benefit to the Beneficiary.

Separate annuities: At your request, we will apply the Accumulation Value to provide separate annuities for each joint annuitant, if both are living on the Annuity Date. You must make this request in writing at least 30 days before the Annuity Date. For this purpose, you must specify a division of the Accumulation Value into two portions. These portions may but need not be of equal size. You must specify the annuity option for each joint annuitant. You are not required to choose the same annuity option for both joint annuitants.

In addition to these three options, you may choose any other form of annuity agreed upon by us.

Except with our consent, settlement options will not be available to:

- (1) an assignee; or
- (2) any other than a natural person receiving proceeds in his or her own right

ACCUMULATION VALUE: The Accumulation Value at any time is the Single Premium you paid, less any Partial Surrenders and Surrender Charges, accumulated at the Accumulation Interest Rates.

CASH SURRENDERS: You may surrender all or part of the Accumulation Value before annuity payments begin.

We have a Surrender Charge in effect for the first seven years after the Issue Date, but only if:

- (1) there is more than one surrender within a Contract Year, or
- (2) the surrender exceeds the Allowable Portion of the Accumulation Value. The Allowable Portion is shown on the Schedule Page.

On the first surrender in a Contract Year, the Surrender Charge applies only to the amount in excess of the Allowable Portion of the Accumulation Value.

If an Accumulation Interest Rate is less than the Surrender Interest Rate, you may surrender this contract without a Surrender Charge provided you notify us within 60 days of the effective date of the Accumulation Interest Rate. After 60 days, any Surrender Charge in effect will be reinstated. However, you will not forfeit your right to surrender this contract without a Surrender Charge should a future Accumulation Interest Rate be below the Surrender Interest Rate.

If you surrender the entire Accumulation Value, the amount we pay you, added to any prior amounts we paid you for Partial Surrenders, will not be less than the Single Premium you paid us.

We may defer payment of cash surrenders for not more than six months.

BENEFIT IN EVENT OF DEATH: We will pay the Accumulation Value to the Beneficiary if:

- (1) the Annuitant dies before the Annuity Date; and
- (2) you have not specified a settlement option.

The amount paid will be the Accumulation Value as of the date of death accumulated at the Accumulation Interest Rate to the date of payment by us. It will be paid when we receive acceptable proof of death. No Surrender Charge will apply.

ANNUAL STATEMENT OF VALUES: As of each contract anniversary on or before the Annuity Date, we will send you a statement which shows the:

- (1) Accumulation Value; and

- (2) Surrender Value; and

- (3) Monthly life annuity with ten years certain which can be provided on the Annuity Date by the current Accumulation Value; and

- (4) Declared Interest Rate.

NORMAL SETTLEMENT; ANNUITY DATE: The Accumulation Value will be used to provide a life annuity as shown on the Schedule Page if:

- (1) the Annuitant is living on the Annuity Date; and
- (2) you have not made an alternate election.

The Annuity Date will be:

- (1) the contract anniversary following the Annuitant's 65th birthday; or
- (2) ten years from the Issue Date if the Issue Age is more than 55 years; or
- (3) the date specified in the application.

CHANGE IN ANNUITY OPTION OR DATE: You may defer the Annuity Date; deferral may not be to a date beyond the Annuitant's 85th birthday. After five years from the Issue Date, you may:

- (1) Advance the Annuity Date (but not to a date earlier than the date of the request); or
- (2) elect to begin payments under a settlement option.

Written request must be made:

- (1) during the Annuitant's lifetime;
- (2) at least 30 days before the Annuity Date; and
- (3) at least 30 days before any settlement option date.

BENEFITS PAYABLE TO BENEFICIARY: During the Annuitant's lifetime, you may choose a settlement option rather than a lump sum death benefit. The Beneficiary may make this choice after the Annuitant's death if:

- (1) you have not done so; and
- (2) payments have not begun.

MINIMUM PAYMENTS: We will not make periodic payments of less than \$20.00; for lesser amounts due, we will change the frequency of payments. This provision applies to payments we make to the Annuitant or to any Beneficiary.

SETTLEMENT OPTIONS

If you elect an annuity option by death, surrender or annuitization, the Accumulation Value of this contract may be applied under any of the options set forth below, provided that:

- (1) In the event of surrender, the option is elected on or prior to the surrender date.
- (2) In the event of death, the option is elected within 30 days of the date on which we notify the Beneficiary that proceeds are payable.

At the time payments under a settlement option begin, we will pay the greater of

- (1) the amount guaranteed under this contract; or
- (2) the amount that would be provided by the application of the Accumulation Value to purchase a single premium immediate annuity offered by us to the same class of annuitants, or
- (3) an amount determined by more favorable rates which we then offer.

OPTION 1, LIMITED PAYMENTS: Equal payments for a set time, not more than 30 years. Any excess interest we declare will be paid yearly.

OPTION 2, LIFE INCOME: LIFE ANNUITY. Equal monthly payments as long as the payee lives.

WITH CERTAIN PERIOD. Equal monthly payments for five, ten, or twenty years (the certain period), as elected, and thereafter for the remaining lifetime of the payee.

WITH INSTALLMENT REFUND. Equal monthly payments until the sum of such payments equals the proceeds settled under this option (at which time the installment refund period ends) and thereafter for the remaining lifetime of the payee.

OPTION 3, JOINT LIFE INCOME WITH TWO-THIRDS TO SURVIVOR: Payment of equal monthly (or less frequent) installments during the joint lifetime of the payee and another person. After the death of either the payee or the joint payee, the amount of each installment shall be reduced to two-thirds of the original amount and payments shall continue during the entire remaining lifetime of the survivor.

Rate basis: The monthly installments guaranteed under this contract are based on:

- (1) the 1937 Standard Annuity Table,
- (2) 3½% interest, and
- (3) age nearest birthday.

SETTLEMENT OPTION TABLES

GUARANTEED MONTHLY INSTALLMENTS UNDER OPTIONS 1, 2 OR 3

(Monthly installments are shown for each \$1,000 of net proceeds applied.)

The ages shown are ages nearest birthday when the first monthly installment is payable.)

OPTION 1. INSTALLMENTS FOR A SPECIFIED PERIOD

Years	Installment	Years	Installment	Years	Installment	Years	Installment	Years	Installment	Years	Installment
1	\$84.65	6	\$15.35	11	\$9.09	16	\$6.76	21	\$5.56	26	\$4.84
2	43.05	7	13.38	12	8.46	17	6.47	22	5.39	27	4.73
3	29.19	8	11.90	13	7.94	18	6.20	23	5.24	28	4.63
4	22.27	9	10.75	14	7.49	19	5.97	24	5.09	29	4.53
5	18.12	10	9.83	15	7.10	20	5.75	25	4.96	30	4.45

OPTION 2. LIFE INCOME*

Issue Age							Issue Age						
Male	Female	Life	5 Years Certain	10 Years Certain	20 Years Certain	Installment Refund	Male	Female	Life	5 Years Certain	10 Years Certain	20 Years Certain	Installment Refund
34	39	4.11	4.10	4.08	4.00	3.98	59	64	6.56	6.45	6.15	5.28	5.78
35	40	4.16	4.15	4.13	4.04	4.03	60	65	6.74	6.62	6.28	5.31	5.90
36	41	4.21	4.20	4.18	4.08	4.07	61	66	6.93	6.79	6.41	5.35	6.03
37	42	4.27	4.26	4.23	4.12	4.12	62	67	7.13	6.97	6.55	5.39	6.16
38	43	4.33	4.32	4.29	4.16	4.16	63	68	7.35	7.16	6.69	5.43	6.29
39	44	4.39	4.38	4.34	4.21	4.21	64	69	7.57	7.36	6.83	5.47	6.44
40	45	4.45	4.44	4.40	4.26	4.27	65	70	7.81	7.58	6.98	5.51	6.59
41	46	4.52	4.51	4.47	4.30	4.32	66	71	8.06	7.79	7.12	5.54	6.75
42	47	4.59	4.58	4.53	4.35	4.37	67	72	8.33	8.03	7.27	5.57	6.91
43	48	4.67	4.65	4.60	4.40	4.43	68	73	8.62	8.26	7.42	5.60	7.08
44	49	4.75	4.73	4.67	4.45	4.49	69	74	8.92	8.52	7.58	5.63	7.26
45	50	4.83	4.81	4.75	4.50	4.56	70	75	9.24	8.78	7.73	5.65	7.46
46	51	4.92	4.89	4.82	4.56	4.62	71	76	9.59	9.06	7.88	5.67	7.66
47	52	5.01	4.98	4.90	4.61	4.69	72	77	9.95	9.34	8.03	5.69	7.86
48	53	5.10	5.07	4.99	4.66	4.76	73	78	10.33	9.63	8.18	5.70	8.08
49	54	5.20	5.17	5.07	4.72	4.84	74	79	10.74	9.94	8.32	5.71	8.32
50	55	5.31	5.27	5.17	4.77	4.91	75	80	11.19	10.27	8.46	5.72	8.56
51	56	5.42	5.38	5.26	4.83	4.99	76	81	11.66	10.59	8.60	5.73	8.81
52	57	5.54	5.49	5.36	4.89	5.08	77	82	12.15	10.93	8.73	5.73	9.09
53	58	5.66	5.61	5.46	4.94	5.17	78	83	12.67	11.27	8.86	5.74	9.37
54	59	5.79	5.73	5.56	5.00	5.26	79	84	13.25	11.63	8.97	5.74	9.67
55	60	5.93	5.87	5.67	5.05	5.35	80	85	13.85	11.99	9.08	5.75	9.98
56	61	6.08	6.00	5.79	5.10	5.45	81	86	14.49	12.36	9.18	5.75	10.32
57	62	6.23	6.14	5.90	5.15	5.56	82	87	15.17	12.74	9.28	5.75	10.66
58	63	6.39	6.29	6.02	5.21	5.67	83	88	15.92	13.11	9.36	5.75	11.03

OPTION 3. JOINT AND TWO-THIRDS TO SURVIVOR*

Age of Other Payee.		Age of Annuitant (Male, age on first line. Female age on second line)															
M	F	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
55	60	\$5.53	\$5.59	\$5.65	\$5.71	\$5.78	\$5.84	\$5.91	\$5.98	\$6.05	\$6.11	\$6.18	\$6.25	\$6.32	\$6.39	\$6.46	\$6.53
56	61	5.59	5.65	5.72	5.78	5.85	5.92	5.99	6.06	6.13	6.20	6.27	6.34	6.42	6.49	6.56	6.64
57	62	5.65	5.72	5.78	5.85	5.92	5.99	6.07	6.14	6.21	6.29	6.36	6.44	6.51	6.59	6.67	6.74
58	63	5.71	5.78	5.85	5.92	6.00	6.07	6.14	6.22	6.30	6.37	6.45	6.53	6.61	6.69	6.77	6.85
59	64	5.78	5.85	5.92	6.00	6.07	6.15	6.23	6.30	6.38	6.47	6.55	6.63	6.71	6.80	6.88	6.96
60	65	5.84	5.92	5.99	6.07	6.15	6.23	6.31	6.39	6.47	6.56	6.64	6.73	6.82	6.90	6.99	7.08
61	66	5.91	5.99	6.07	6.14	6.23	6.31	6.39	6.48	6.56	6.65	6.74	6.83	6.92	7.01	7.11	7.20
62	67	5.98	6.06	6.14	6.22	6.30	6.39	6.48	6.57	6.66	6.75	6.84	6.94	7.03	7.13	7.22	7.32
63	68	6.05	6.13	6.21	6.30	6.38	6.47	6.56	6.66	6.75	6.85	6.94	7.04	7.14	7.24	7.34	7.44
64	69	6.11	6.20	6.29	6.37	6.47	6.56	6.65	6.75	6.85	6.95	7.05	7.15	7.25	7.36	7.47	7.57
65	70	6.18	6.27	6.36	6.45	6.55	6.64	6.74	6.84	6.94	7.05	7.15	7.26	7.37	7.48	7.59	7.70
66	71	6.25	6.34	6.44	6.53	6.63	6.73	6.83	6.94	7.04	7.15	7.26	7.37	7.49	7.60	7.72	7.84
67	72	6.32	6.42	6.51	6.61	6.71	6.82	6.92	7.03	7.14	7.25	7.37	7.49	7.61	7.73	7.85	7.97
68	73	6.39	6.49	6.59	6.69	6.80	6.90	7.01	7.13	7.24	7.36	7.48	7.60	7.73	7.85	7.98	8.11
69	74	6.46	6.56	6.67	6.77	6.88	6.99	7.11	7.22	7.34	7.47	7.59	7.72	7.85	7.98	8.11	8.25
70	75	6.53	6.64	6.74	6.85	6.96	7.08	7.20	7.32	7.44	7.57	7.70	7.84	7.97	8.11	8.25	8.39

*Figures for ages not shown will be furnished on request

GENERAL PROVISIONS

1. DEFINITIONS:

The following terms are defined solely for the purpose of interpreting and administering this Agreement:

TERMINATION shall mean maturity of a policy as a result of, (a) the death of the Insured, or (b) endowment, or (c) surrender of such policy for its cash value, or (d) final amounts payable after termination of Family Income payments.

NET PROCEEDS, when applicable to the termination date, shall be the net amount payable under a policy on the termination date, excluding, however, any unearned premiums paid in advance thereunder.

NET PROCEEDS, when applicable to any time other than the termination date, shall be the single sum which equals (a) the then commuted value of the remainder of the death benefit of a policy containing a Family Income provision, or (b) the then commuted value of any installments certain not yet due under Options A or B, or (c) the amount then held under Options C or D, including any unpaid accrued interest thereon, as the case may be.

CHILDREN, if not designated by name, shall include only the lawful and legally adopted sons and daughters of the primary payee and not grandchildren or other descendants. This classification is available only if the primary payee was the Insured hereunder.

BY REPRESENTATION shall mean succeeding, by reason of the death of a parent, to net proceeds which would have been apportioned to or further held for such parent, had he lived.

ESTATE OF SURVIVOR shall mean the executors or administrators of the last survivor of the payees designated in preceding Sections of the same Table.

OPTION shall mean the corresponding Option appearing in the policy under the heading "Optional Modes of Settlement" to be attached hereto. If the policy does not contain said "Optional Modes of Settlement", this Agreement shall constitute a request to add hereto "Optional Modes of Settlement" corresponding to that contained in policies which the Company is now issuing.

POLICY shall mean annuity contract when such meaning is applicable; and masculine pronouns shall include the feminine.

2. PAYMENTS UNDER A TABLE:

(a) If there is more than one Table, each Table shall be considered separately in construing the provisions of this Agreement.

(b) Payment of the net proceeds under a Table shall be in accordance with the first Section thereof in which there is a payee surviving, and at the death of the last survivor of the payees designated in such Section, payment of any remaining net proceeds shall be in accordance with the next succeeding Section in which there is a then surviving payee, and so on from Section to Section until payment shall have been made of the entire net proceeds under such Table.

(c) In order to be entitled to receive payments provided for him under a Section, a payee must be living on their respective due dates.

(d) If a Section of a Table designates payees by representation but does not designate as payees by representation the children of deceased children of the primary payee, payment of net proceeds under such Section shall be as follows:

If such Section does not provide for division of net proceeds into separate shares, such payees who are living at the time of each payment shall share the payments under such Section and such shares shall be equal unless otherwise expressly provided therein;

If such Section provides for division of net proceeds into separate shares, one such share, payable as provided in such Section, shall be for each such payee who is living at the death of the last survivor of the payees designated in preceding Sections, and such shares shall be equal unless otherwise expressly provided therein. At the subsequent death of a payee designated in such Section, any net proceeds then held for such payee shall be paid to any then surviving payees of such Section in single sums proportionate to their original shares.

(e) If a Section of a Table designates as payees by representation the children of deceased children of the primary payee, payment of net proceeds under such Section shall be as follows:

Net proceeds at the death of the last survivor of the payees designated in preceding Sections shall be divided into equal separate shares, one share, payable as provided in such Section, for each then surviving designated child of the primary payee, if any, and one share, payable in equal single sums, to the then surviving children, if any, of each deceased designated child of the primary payee;

At the subsequent death of a child of the primary payee, any net proceeds then held for such child shall be paid in equal single sums to his then surviving children, if any, otherwise such net proceeds shall be divided into equal separate shares, one share, payable in one sum, to each then surviving designated child of the primary payee, if any, and one share, payable

3. PRIVILEGES:

(a) If a payee designated in a Section of a Table is given in such Section a privilege of withdrawal or commutation, such payee may, subject to any limitations with respect thereto stated in such Section and upon written notice to the Insurance Company accompanied by this Agreement, make withdrawals in amounts of not less than \$100.00 each from any net proceeds held for him in such Section under Options C or D, or, as the case may be, elect to receive the commuted value of any installments certain or share therein payable to him in such Section under Options A or B, but under Option B only if the right to installments for life has expired with the primary payee.

Wherever the following appear herein they shall be read as:

Option A	Option 3
Option B	Option 4
Option C	Option 1
Option D	Option 2

(b) If a primary payee designated in Section 1 of a Table is given in such Section the privilege of substituting payment under another Option:

The amount to be applied under such other Option shall be the net proceeds held for such payee in Section 1 at the time such privilege is exercised, but such privilege shall not be available when such net proceeds are less than \$1000.

A primary payee may make only one such substitution and must be by written notice accompanied by this Agreement.

4. OPTION PAYMENTS ALTERED OR TERMINATED:

After thirty full years following the termination date of a policy, no Option payments shall be made under any Section of a ~~Table. If the net proceeds at the death of the last survivor of the primary payees designated in Section 1 shall be less than \$1,000, then such share shall be immediately paid in one sum. If net proceeds held for a payee under Option C be reduced by withdrawals to less than \$1,000, then such net proceeds shall be immediately paid in one sum.~~

If the Option payments for the fractional part of a year shall amount to less than \$10.00 each, the Company will pay at such intervals as will make each payment amount to at least \$10.00. If a Section of a Table provides for Option D installments and the sum of one year's tabular installments shall be less than 5% of the net proceeds applied under that Option, then the Company shall increase each such tabular installment by the amount necessary to achieve such percentage, any provision of said Option for a different percentage notwithstanding.

5. RELIANCE ON AFFIDAVITS:

Before permitting or taking any action provided by this Agreement which is contingent upon the death or survival of any payee, the Company shall be furnished with due proof thereof. As to any facts relating to any payee, including dates of birth and death, and identity, the Company may rely upon any affidavit or other written evidence deemed satisfactory to it, and is hereby released from all liability in relying and acting upon the statements contained therein.

6. EFFECT OF CHANGES OF BENEFICIARY AND EXERCISE OF PRIVILEGES UNDER THIS AGREEMENT:

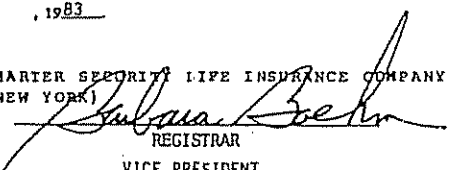
If allowed by the statutes of the state of residence, the primary payee may, without the consent of a secondary payee, (a) change the designation of contingent beneficiaries, and (b) freely exercise the privileges contained in Section 1 of any Table herein. In the absence of an enabling statute, the consent of the secondary payee (s) shall be required for the exercise of all such rights.

7. PAYMENT TO MINORS:

Any proceeds due and payable to any minor payee hereunder shall be paid to the legally appointed guardian of such minor except to the extent that provision is made by statute for payment directly to a minor.

I Dated CHARTER SECURITY LIFE INSURANCE COMPANY (NY) this SEVENTEENTH
day of JUNE, 1983

CHARTER SECURITY LIFE INSURANCE COMPANY
(NEW YORK)


REGISTRAR

VICE PRESIDENT

SUPPLEMENTARY AGREEMENT

(No. SC1126)

Due to termination, as of May 5, 83 of Policy No(s) 82A08153 issued
 by Charter Security Life Insurance Company (New York) on the life of Dennis J. Dimon
 the undersigned hereby requests that the aggregate net proceeds payable under said pol-
 icy as of the termination date be paid
 to the payees designated in, and in the order and manner provided in, the following Table as of the termination date be paid
 of this Agreement. Tables and in the General Provisions

The undersigned surrenders said policy(s) to the Insurance Company and, concurrently herewith, revokes any beneficiary designa-
 tion and any election of settlement heretofore made under the said policy(s).

PAYEES	MANNER OF PAYMENT	PRIVILEGES
TABLE I		
SECTION ONE - PRIMARY PAYEE		
Dennis Dimon Laurel Lane West Kingston, RI 02892	Monthly payments in the amount of \$1,450.45, increasing 3% annually, commencing on June 6, 1983, for a period of 240 months certain and life thereafter.	
SECTION TWO-CONTINGENT PAYEE		
Katherine I. Dimon, Wife	In the same manner as the Primary Payee, for the period certain.	

(SEE OTHER SIDE FOR ANY COMPANY ENDORSEMENTS)

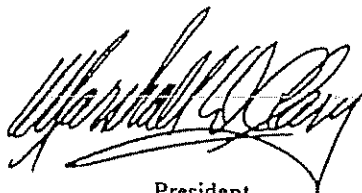
Charter Security Life Insurance Company (New York)

ENDORSEMENT

This amendment is attached to and forms part of the policy.

The Annual Statement of Values provision on Page 7 is hereby amended as follows:

The words "As of each contract anniversary" are replaced with the words "At least once each year".

A handwritten signature in black ink, appearing to read "W. J. O'Connell", is written over a horizontal dotted line.

President



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-387-2350

CERTIFIED MAIL RETURN RECEIPT REQUESTED

July 14, 1983

Mr. Kurt Snyder
Dean Witter Reynolds
111 E. Onondaga Street
Syracuse, New York 13202

RE: Dennis Dimon
Policy #83A08153
NSC 1126

Dear Kurt:

As outlined in our telephone conversation, due to a clerical error the option indicated on the above supplementary contract for Dennis Dimon was incorrectly typed as 240 months certain and life thereafter instead of 240 months only.

Enclosed is a new contract correctly stating the option elected. Please be advised that the former contract mailed to Robert Foley is null and void. I would appreciate it if you will return that contract to my attention.

Thank you for your cooperation and again, my apologies for this oversight

Sincerely,


Barbara Boehm, Vice President
Policyowner Service Department

BAB:aw

Enc.



000021



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

August 12, 1983

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

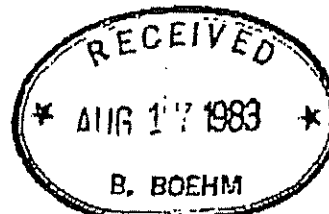
Dear Mr. Foley:

DENNIS DIMON
CHARTER SECURITY POLICY NO: 83 A 08153
OUR FILE NO: 399 LM 106125-Z

I received the replacement policy issued by Charter Security Life Insurance Company (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, American Motorists Insurance Company, providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files.



000025

Mr. Robert A. Foley
August 12, 1983
-2-

I intended to return the replacement contract issued by Barbara Boehm of Charter Security, but it was lost with my briefcase on August 11, 1983.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY



John L. Noe
Home Office Claim

JLN:bw

cc: Ms. Barbara Boehm
Vice President
Charter Security Life Insurance Company
(New York)
720 Fifth Avenue
New York City, New York 10019

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-397-2350

September 26, 1983

Mr. John L. Noe
Home Office Claim
American Motorists
Insurance Company
Long Grove, Illinois 60049

EXHIBIT

tabbies

5

Re: Dennis Dimon - Policy No. 83 A 08153
Your File No. 399 LM 106125-2

Dear Mr. Noe:

I am in receipt of your letter to Barbara Boehm, Vice President of Charter Security Life Insurance Company (New York ("CSL(NY)"), regarding the annuity policy (Policy No. 83 A 08153) issued by CSL(NY) to Dennis Dimon.

According to information you received from Mr. Hughes of Lattie Associates, Robert Foley of Dean Witter Reynolds, Inc., allegedly offered to provide Mr. Dimon with a CSL(NY) annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter based on a single premium of \$173,000.00.

Contrary to the information you received from Mr. Hughes, there is nothing to indicate that anything other than a single premium immediate annuity with a 20 year (i.e., 240 months) certain period was applied for. As you can see from the attached copy of Mr. Dimon's application, which American Motorists Insurance Company signed as applicant, a 20 year certain policy was applied for. I have also attached for your reference, a copy of a quotation sheet from CSL(NY) to Mr. Foley which clearly shows that CSL(NY)'s quote was based on the issuance of a certain period annuity without a life option. As previously explained by Ms. Boehm in her letter to Mr. Kurt Snyder of Dean Witter Reynolds dated July 14, 1983 (see enclosed copy), the option indicated on the Supplementary Contract originally sent to Dean Witter Reynolds on June 17, 1983 for delivery to your office was incorrectly typed as a 240 month certain and life thereafter annuity instead of 240 months only. Again, on behalf of CSL(NY), I apologize for this oversight.

000027

Mr. John L. Noe
Page 2
September 26, 1983

Based on the foregoing, CSL(NY) guarantees to continue to pay Mr. Dimon under the terms of his policy a \$1,450.45 monthly annuity during the first policy year, which will increase annually at a rate of 3% compounded annually for 240 months certain. No payments will be made beyond the expiration of the 240 month period. Accordingly, the original Supplementary Contract mailed to Robert Foley and in your possession is null and void. I would appreciate your returning that contract to:

Barbara Boehm
Vice President
Policyowner Service Department
Charter Security Life
Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

By copy of this letter, I am instructing Ms. Boehm to send to your attention a correct copy of the Supplementary Contract for Dennis Dimon which you stated was lost with your briefcase on August 11, 1983.

If I can be of any further assistance in this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Robert Liguori
Counsel

RL/spf
Enclosures

cc: Ms. Barbara Boehm

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

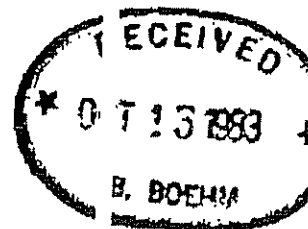
Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026

Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company
Long Grove, IL 60049 • 312/540-2000

October 10, 1983

Mr. Robert Liguori, Counsel
Charter Security Life Insurance
Company (New York)
720 Fifth Avenue
New York, New York 10019



Dear Mr. Liguori:

DENNIS DIMON
CHARTER SECURITY POLICY: 83A08153
OUR FILE NO: 399 LM 106125-2


In reply to your September 26, 1983, Sections 14 and 15 of the application that I signed were blank. The entries now appearing were filled in after I returned the signed application.

The original annuity policy received was for a term of 240 months certain and life thereafter as ordered and agreed upon between Mr. Hughes and Mr. Foley. Your agent, Mr. Foley further confirmed this to me by telephone in April, 1983. May I suggest you contact him to verify this?

I intend to retain the original policy in our files and consider it to be valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim

JLN:ml



cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

Mr. Roger Hughes
Latti Assoc., Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Ms. Barbara Boehm
Vice President
Policyowner Service Dept.
Charter Security Life
Insurance Co. (New York)
720 Fifth Avenue
New York, NY 10019

000029



Charter Security Life Insurance Company of New York
720 Park Avenue
New York, New York 10022
Telephone 212-307-2350

October 14, 1983

Mr. John L. Noe
Home Office Claim
American Motorists Insurance Company
Long Grove, IL 60049

Re: Dennis Dimon
Contract No. 83A08153
Your File No. 399LM10612 -2

Dear Mr. Noe:

As was indicated in Mr. Robert Ligouri's letter of September 26, 1983, we are enclosing a corrected Supplementary Contract in regards to Mr. Dimon's Single Premium Immediate Annuity. This contract has been updated to reflect monthly payments for a period of 240 months only.

Please see that the original Supplementary Contract, which was mailed to Robert Foley, is returned to me, as that contract is no longer valid.

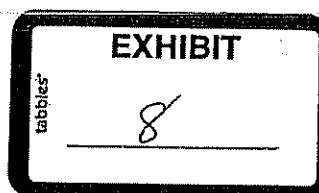
Please accept our apologies for any inconvenience this matter has caused you

Sincerely,


Barbara Boehm, Vice President
Policyowner Service Department

BAB/cg

Enclosure



000023



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

October 12, 1983

Ms. Barbara Boehm, Vice President
Policyowner Service Department
Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

Dear Ms. Boehm:

RE: DENNIS DIMON
CONTRACT NO. 83408153
OUR FILE NO. 399 LM 156125 Z

In reponse to your October 14, 1983 I reject and return
herewith the Supplementary Agreement and General Provisions
attached thereto. The original annuity policy will be re-
tained in the files of American Motorists Insurance
Company and considered valid and enforceable.

Very truly yours,

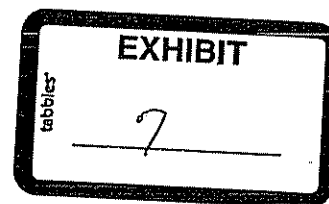
AMERICAN MOTORISTS INSURANCE COMPANY

John L. Noe
Home Office Claims

JLN/lz

cc: Mr. Roger Hughes
Latti Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108



000024

Exhibits: 22 - 25 Volume 1, Pages 1 - 84

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-11073-REK

DENNIS DIMON

Plaintiff

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, et al.

Defendants

(Complete caption on next page.)

DEPOSITION OF ROGER E. HUGHES, JR.
Wednesday, May 10, 2006, 2:01 p.m.
Sullivan, Weinstein & McQuay, P.C.

2 Park Plaza, Suite 610
Boston, Massachusetts

----- Reporter: David A. Arsenault, RPR -----
darsenault@fabreporters.com www.fabreporters.com

Farmer Arsenault Brock LLC

50 Congress Street, Suite 415, Boston, Mass. 02109

617.728.4404 fax 617.728.4403

Roger E. Hughes, Jr.
Volume 1 - May 10, 2006

<p style="text-align: right;">30</p> <p>1 Q. That may have been the last time?</p> <p>2 A. That may have been the last time.</p> <p>3 Q. But it was your practice back at this</p> <p>4 period of time in the year 1983 time frame to</p> <p>5 consult with Professor Weckstein regarding what kind</p> <p>6 of stream of payments could be achieved for a</p> <p>7 certain amount of money?</p> <p>8 A. Correct.</p> <p>9 Q. I show you what has been marked as Exhibit</p> <p>10 24.</p> <p>11 MS. McQUAY: Tim, for your information,</p> <p>12 it is the document entitled Proposal by Charter</p> <p>13 Security Life Insurance Company.</p> <p>14 Q. Is this one of the documents that</p> <p>15 Mr. Kaplan provided to you for your review?</p> <p>16 A. Yes.</p> <p>17 Q. And do you have any recollection of this</p> <p>18 document?</p> <p>19 A. Well, I have a recollection that I've seen</p> <p>20 it in the last six to nine months. Before that I</p> <p>21 had no recollection of this document.</p> <p>22 Q. So when you say you've seen it, you've seen</p> <p>23 it because Mr. Kaplan gave it to you.</p> <p>24 A. Correct.</p>	<p style="text-align: right;">32</p> <p>1 Q. Directing your attention to Exhibit 4, you</p> <p>2 are shown on the letter as being copied. Do you see</p> <p>3 that?</p> <p>4 A. I do see that.</p> <p>5 Q. Do you have any recollection one way or</p> <p>6 another whether you've seen a copy of Exhibit 4 back</p> <p>7 at the time?</p> <p>8 A. I've never seen that document, as far as I</p> <p>9 recall.</p> <p>10 Q. Even though it is copied to you, you don't</p> <p>11 remember seeing it?</p> <p>12 A. I don't remember seeing it.</p> <p>13 Q. Do you have a recollection? Are you</p> <p>14 certain that you did not, or do you just not know</p> <p>15 one way or the other?</p> <p>16 A. I would say I never saw it.</p> <p>17 Q. And why do you say you never saw it?</p> <p>18 A. Because in looking at it, it indicates that</p> <p>19 there were discussions regarding -- let me read it.</p> <p>20 Q. By all means.</p> <p>21 (Pause.)</p> <p>22 A. Just reading this letter, the substance is</p> <p>23 so strange that I think I would remember it.</p> <p>24 Q. In what way is the substance so strange</p>
<p style="text-align: right;">31</p> <p>1 Q. But prior to the time that he gave it to</p> <p>2 you, you don't remember seeing it?</p> <p>3 A. I don't remember seeing it. It doesn't</p> <p>4 mean I didn't see it.</p> <p>5 Q. It doesn't ring any bells with you. It</p> <p>6 doesn't refresh your memory?</p> <p>7 A. It doesn't refresh my memory.</p> <p>8 Q. Do you have any recollection of having</p> <p>9 talked with anyone at Dean Witter about getting a</p> <p>10 proposal for annuity in the Dimon matter?</p> <p>11 A. I don't.</p> <p>12 Q. Do you have any recollection of having</p> <p>13 obtained proposals from any source regarding an</p> <p>14 annuity in the Dimon matter?</p> <p>15 A. I have no independent recollection.</p> <p>16 Q. I'm going to show you what has previously</p> <p>17 been marked as Exhibit 4 in this case, which I will</p> <p>18 represent to you is a copy of a letter that was</p> <p>19 produced from the files of Metropolitan Life, and</p> <p>20 ask you if you have seen Exhibit 4 before.</p> <p>21 A. No.</p> <p>22 Q. This was not one of the documents that</p> <p>23 Mr. Kaplan gave to you?</p> <p>24 A. I don't believe so. It is not.</p>	<p style="text-align: right;">33</p> <p>1 that you think you would remember it?</p> <p>2 A. It talks about somebody, Mr. Noe, intending</p> <p>3 to return the replacement contract, but it was lost</p> <p>4 with my briefcase on August 11th. That to me is</p> <p>5 strange, but this whole case is strange. Anyway....</p> <p>6 Q. Other than the reference that he lost</p> <p>7 something in his briefcase, is there anything else</p> <p>8 in this letter that strikes you as being so strange</p> <p>9 that you think you would remember it?</p> <p>10 A. Because he says he was advised by me about</p> <p>11 the quotation. I don't know -- I don't remember the</p> <p>12 name John Noe or No-ee, however he pronounces his</p> <p>13 name. It looks to me like the address is in</p> <p>14 Illinois.</p> <p>15 Q. So you don't remember having any</p> <p>16 conversation with Mr. Noe?</p> <p>17 A. No.</p> <p>18 Q. Do you remember having any conversation</p> <p>19 with anyone at the settlement insurance company?</p> <p>20 A. I don't. But I'm not saying it didn't</p> <p>21 happen.</p> <p>22 Q. You expected you would have had</p> <p>23 conversations with someone at the settling insurance</p> <p>24 company?</p>

10 (Pages 34 to 37)

Roger E. Hughes, Jr.
Volume 1 - May 10, 2006

34

1 A I'm not sure, because I'm not sure whether
2 this case was settled before I appeared at the
3 settlement conference. At that time in 1983 Joe
4 Flannery and an associate David Ansel left the firm.
5 I can tell you from looking at the docket entries
6 that Mr. Flannery in the docket entries has a
7 telephone number which is different from the
8 telephone number for Latti & Associates. I don't
9 know, but it may be that the case was settled by Mr.
10 Flannery.

11 **Q. When did Mr. Flannery leave Latti &**
12 **Associates?**

13 A. Roughly March, April 1983.

14 **Q. So you think it is possible, you're not**
15 **sure, but you think it is possible that Mr. Flannery**
16 **tried and settled this case and you sort of picked**
17 **up the pieces as it were?**

18 A. I think that's possible, yeah.

19 **Q. Do you know where Mr. Flannery is now?**

20 A. He's deceased.

21 **Q. Let me now show you what has been marked as**
22 **Exhibit 5 in this case. Take a moment to review**
23 **that, if you need to, and tell me if you've seen**
24 **that before today.**

35

1 A. This is a copy of the letter that I
2 received from Mr. Kaplan.

3 **Q. Now, you are shown as having also been sent**
4 **a copy of this letter back at the time, back in**
5 **1983, are you not?**

6 A. Yes.

7 **Q. Did you receive a copy back then?**

8 A. I don't remember seeing it.

9 **Q. Do you know whether or not you did or you**
10 **just don't remember?**

11 A. I don't believe I saw it.

12 **Q. Why do you believe you did not?**

13 A. Because I don't remember it.

14 **Q. With all due respect, you haven't**
15 **remembered a number of things that you believe you**
16 **did see.**

17 A. Correct.

18 **Q. Is there some reason other than the fact**
19 **that you don't recall seeing this to lead you to**
20 **believe that you didn't get it?**

21 A. Because of the office procedures at Latti &
22 Associates. The mail would come in. The mail was
23 separated by the office manager, reviewed by Mike
24 Latti, and then given to the individual attorneys.

36

1 Not everything was given to the individual
2 attorneys.

3 **Q. Are you telling us that every piece of mail**
4 **that came in was reviewed by Mr. Latti before it was**
5 **given to the addressee?**

6 A. My memory is that he would quickly scan
7 everything. It doesn't mean he would review
8 interrogatories or depositions. But Mr. Latti was
9 in control.

10 **Q. Did you have experiences with Mr. Latti**
11 **where he did not give you correspondence that was**
12 **addressed to you?**

13 A. How would I know?

14 **Q. So you don't know one way or the other?**

15 A. I don't know.

16 **Q. When you say he didn't give everything to**
17 **individual attorneys, on what do you base that?**

18 A. Because I knew with respect to settlements
19 of cases, not everything would go to the attorney.
20 We would do the legwork and paperwork and settle the
21 case. From that moment on it became an
22 administrative matter and it was no longer
23 information that was provided to the individual
24 attorneys.

37

1 **Q. Now, you were a partner in this firm at the**
2 **time?**

3 A. Yes, ma'am.

4 **Q. Notwithstanding that, Mr. Latti would not**
5 **necessarily give you every mail that was addressed**
6 **to you?**

7 A. There are partners and there are partners.

8 **Q. Would you explain that, please, just for**
9 **the record?**

10 A. I was a partner but a very minor partner.
11 And therefore I was not given the opportunity to see
12 all of the information that came into the firm. I
13 was there for only two years as a partner when I had
14 enough and left.

15 **Q. Now, you testified that it was Mr. Latti's**
16 **practice that once a case was settled, from that**
17 **point forward he controlled the flow of information?**

18 A. No, not that he controlled the flow of
19 information. But the paperwork that related to when
20 the checks would come in, the individual attorneys
21 wouldn't get to see the checks. The checks weren't
22 made out to Roger Hughes. They were made out to
23 Latti & Associates. So you wouldn't get to see
24 that. Other things were happening in the firm at

Roger E. Hughes, Jr.
Volume 1 - May 10, 2006

<p style="text-align: right;">38</p> <p>1 the time. The office manager had some substance</p> <p>2 problems. So there are other things going on</p> <p>3 Q. Drug problems or alcohol problems?</p> <p>4 A. Alcohol problems.</p> <p>5 Q. And this officer manager opened the mail?</p> <p>6 A. Yes.</p> <p>7 Q. In your experience, because of her alcohol</p> <p>8 problems or other reasons, was it your experience</p> <p>9 that she sometimes opened the mail and didn't</p> <p>10 distribute it?</p> <p>11 A. There was a criminal case against Kathy</p> <p>12 Foster. She was convicted of embezzling funds from</p> <p>13 the firm. Part of the testimony in the case was</p> <p>14 that she would not provide all of the material to</p> <p>15 Mr. Latti of the information that came into the firm</p> <p>16 regarding cases</p> <p>17 Q. Now, with respect to Exhibits 4 and 5 that</p> <p>18 you said you don't recall seeing, those two letters</p> <p>19 don't relate to settlement funds proper, do they?</p> <p>20 A. They relate to a settlement.</p> <p>21 Q. But what I'm driving at, since they don't</p> <p>22 enclose funds, do you nonetheless believe that</p> <p>23 either Mr. Latti or Ms. Foster would not necessarily</p> <p>24 provide you with copies of those letters even though</p>	<p style="text-align: right;">40</p> <p>1 Q. That was not one of the documents that</p> <p>2 Mr. Kaplan gave you to look at?</p> <p>3 A. No.</p> <p>4 Q. You are shown on Exhibit 6 as being a</p> <p>5 recipient?</p> <p>6 A. I am.</p> <p>7 Q. But you have no recollection of having</p> <p>8 received it?</p> <p>9 A. No.</p> <p>10 Q. Do you have any reason to believe that you</p> <p>11 did not receive Exhibit 6, despite the fact that you</p> <p>12 are an addressee?</p> <p>13 A. Other than the fact I don't remember it,</p> <p>14 and the office procedure I referred to. I just</p> <p>15 don't recall seeing this document.</p> <p>16 Q. I want to show you now what has been marked</p> <p>17 as Exhibit 1 in this case and ask if you've seen</p> <p>18 that before.</p> <p>19 A. That was also provided to me by Mr. Kaplan</p> <p>20 Q. And this is an annuity application. Is</p> <p>21 that what you understand it to be?</p> <p>22 A. That's what it says on the top.</p> <p>23 Q. Before Mr. Kaplan gave this to you in the</p> <p>24 last six months or so, a year?</p>
<p style="text-align: right;">39</p> <p>1 they were addressed to you?</p> <p>2 A. I'm not saying that they were deliberately</p> <p>3 not shown to me. What I'm saying is I don't</p> <p>4 remember ever seeing them and I don't believe I ever</p> <p>5 saw them. That's what I'm saying.</p> <p>6 Q. And you are suggesting that one of the</p> <p>7 reasons you may not have seen them is because either</p> <p>8 Mr. Latti or Ms. Foster didn't give them to you?</p> <p>9 A. I'm suggesting that the case was over as</p> <p>10 far as my role and involvement was concerned.</p> <p>11 That's why I wouldn't get it.</p> <p>12 Q. You said that's why you wouldn't get it.</p> <p>13 Was it the practice of the firm once you settled the</p> <p>14 case that the money had been paid, you didn't get</p> <p>15 information relating to the case?</p> <p>16 A. Again, I don't know if I settled the case.</p> <p>17 Once the case was settled, and clearly this case was</p> <p>18 settled, the settlement was approved by the court</p> <p>19 I don't know, for whatever reason, but I don't</p> <p>20 remember ever seeing these documents</p> <p>21 Q. Let me show you what has been marked as</p> <p>22 Exhibit 6 and ask you if you've seen that before</p> <p>23 today.</p> <p>24 A. I've never seen this before either.</p>	<p style="text-align: right;">41</p> <p>1 A. Yeah.</p> <p>2 Q. Before Mr. Kaplan gave that to you to look</p> <p>3 at, had you seen it before?</p> <p>4 A. I don't believe so.</p> <p>5 Q. You see that that annuity application was</p> <p>6 signed by your client, Dennis Dimon?</p> <p>7 A. I see that.</p> <p>8 Q. You don't believe that you would have seen</p> <p>9 it or reviewed it before he signed it?</p> <p>10 A. I don't. I assume if I was -- well, I know</p> <p>11 I was at that hearing. Maybe I saw it then. That</p> <p>12 was the day before this is dated. It says dated in</p> <p>13 Syracuse, New York, this 4th day of May 1983. I</p> <p>14 don't know when Mr. Dimon signed it. I can't tell.</p> <p>15 I don't know.</p> <p>16 Q. You just don't have any memory?</p> <p>17 A. I don't have any memory one way or the</p> <p>18 other.</p> <p>19 Q. Did you ever see a copy of the annuity</p> <p>20 policy that was issued as part of this settlement?</p> <p>21 A. Other than this, Exhibit 1, no.</p> <p>22 Q. Which is an application, correct?</p> <p>23 A. It says application.</p> <p>24 Q. I'm asking about an annuity policy, did you</p>

COPLEY COURT REPORTING, INC.
101 Tremont Street
Boston, Massachusetts 02108
(617) 423-5841

DATE: August 8, 2006

TO: John E. DeWick, Esq.
Todd & Weld, LLP
28 State Street
Boston, Massachusetts 02109

RE: Dennis Dimon v. MetLife, et al.

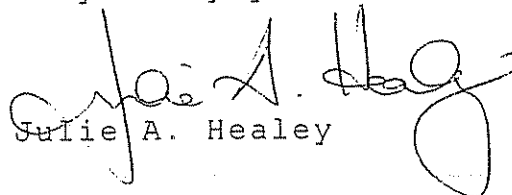
DEPOSITION OF MICHAEL B. LATTI

Dear Attorney DeWick:

Enclosed herewith is your copy of the transcript of the deposition of Michael B. Latti, Volume I, Pages 1-123, taken on July 25, 2006 in the above-referenced case. Please arrange to have the witness read the transcript and sign the signature page. Any corrections to be made to the deposition are to be made separately on the enclosed errata sheet and signed by the witness. Once completed, please forward a copy of the signature page and errata sheet to all counsel of record. Corrections should not be made directly to the transcript.

Thank you for your cooperation. If you have any questions, you may contact me at the above-listed telephone number.

Very truly yours,


Julie A. Healey

CC: Counsel of Record
File

1 that is an assumption you're making. I cannot
2 answer your question because that is not part of
3 the evidence.

4 Q. Okay. Would it be fair to say it's
5 difficult for you to answer many of my questions
6 or some of my questions because of the time lapse
7 between when the events occurred and today?

8 MR. DeWICK: Objection.

9 BY MR. LeBLANC:

10 A. No, no, no.

11 Q. So, you would have no way of knowing if
12 you received these letters if I asked you the
13 questions in 1983 as opposed to asking you now in
14 2006?

15 MR. DeWICK: Objection.

16 BY MR. LeBLANC:

17 A. I said that I have no knowledge of
18 receiving the letters, none. Whether it was then
19 or now, I still have no knowledge. I never saw
20 those letters until litigation was commenced. I
21 never received those letters.

22 I was never told anything of a dispute
23 between insurance companies, Metropolitan and
24 Kemper, except when litigation occurred or shortly

1 before when Kaplan called me, I learned there was
2 a problem in February '05.

3 Q. Okay. So, your testimony here today is
4 you don't know if you received them, but you know
5 for a fact that you never discussed any of the
6 information contained in these letters with any
7 person back in 1983?

8 A. My testimony stands as it is. I have
9 testified continuously.

10 Q. Do you think it's more difficult to
11 prosecute an action due to a lapse of time?

12 MR. DeWICK: Objection.

13 BY MR. LeBLANC:

14 A. It depends on the action, what the facts
15 are and what the circumstances are. Some cases
16 yes, others no.

17 Q. In this case?

18 A. No. That a lapse of time, he had no
19 choice but to bring the suit when he was wronged
20 because an anticipatory breach is a valid defense.

21 We couldn't bring the suit for twenty
22 years no matter what way you look at it, and he
23 waited for the twentieth year, and then he came to
24 an attorney to represent him, so, I don't, so, to

COPY

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DENNIS DIMON,)
)
) Plaintiff,)
)
)
) vs.)
)
)
) METROPOLITAN LIFE INSURANCE COMPANY,) C.A. No.
) 05-11073 WGY
) KEMPER INSURANCE COMPANY, MORGAN)
) STANLEY DW, INC., MICHAEL B. LATTI,)
) LATTI ASSOCIATES and LATTI & ANDERSON,)
) LLP,)
) Defendants.)

DEPOSITION of KATHERINE DIMON, a Witness called by and on behalf of the Defendants, taken pursuant to the applicable Federal Rules of Civil Procedure, before Vincent Martino, a Notary Public within and for the Comm. Of Massachusetts, held at the Law Offices of Ciapciak & Associates, PC, 99 Access Road, Norwood, MA 02062 on Monday, August 7, 2006, commencing at 11:30 a.m.

COPLEY COURT REPORTING
101 Tremont Street
Boston, Masssachusetts 02108
(617) 423-5841

1 on the above contract?

2 A. Yes.

3 Q. Did you ever call MetLife or Charter Security on
4 behalf of Mr. Dimon?

5 A. Yes, I did.

6 Q. Did he ask you to make those calls?

7 A. Yes.

8 Q. He authorized you to speak on his behalf when you
9 made those calls?

10 A. Yes.

11 Q. Do you recall why you called them prior to
12 September 24, 1999?

13 A. Yes.

14 Q. Why did you call them?

15 A. Because there was a problem. The bank called us and
16 they told us that the life insurance that we were using for
17 collateral to get the loan said that it would end in 2003.
18 That's it.

19 Q. Okay. When you say the bank, you are referring to
20 Citizens Bank?

21 A. No, I'm talking about Newport Federal.

22 Q. Who are they?

23 A. That was the first bank we had, then we had
24 Citizens Bank.

25 Q. Did Citizens Bank acquire Newport Federal?

1 call them in 1999?

2 A. I have no reason to believe I didn't call them.

3 Q. Okay.

4 A. I just don't remember.

5 MR. LEBLANC: I have asked that a letter dated June
6 9, 2003 to Dennis Dimon from Sandy Franklin be marked as
7 Exhibit 8.

8 Q. Would you take a look at that document, please.

9 A. Okay.

10 Q. Do you recall receiving that document?

11 A. Yes.

12 Q. When did you receive this document?

13 A. It says June 9.

14 Q. Do you see the first line in this letter is in
15 response to a phone call received from Katherine Dimon?

16 A. Yes.

17 Q. Is that you?

18 A. That's me.

19 Q. Do you recall that you called MetLife?

20 A. Yes.

21 Q. And why did you call them?

22 A. Because they stopped paying my husband his
23 insurance.

24 Q. Do you see where it says since your annuity
25 contract has expired, we are unable to provide you with a

1 A. Yes.

2 Q. And in that connection, you applied for a mortgage
3 loan for the new home you were buying, correct?

4 A. Yes.

5 Q. And you applied for that mortgage loan from Newport
6 Federal Bank?

7 A. Yes.

8 Q. As part of your mortgage loan application from
9 Newport Federal Bank, you offered as collateral your
10 husband's annuity policy, correct?

11 A. Yes.

12 Q. Which you described to your loan officer at Newport
13 Federal Bank as being a lifetime annuity for your husband,
14 correct?

15 A. Yes.

16 Q. Now if I understood correctly at some point the
17 loan officer at Newport Federal, this fellow Don, called
18 you and said that it was not a lifetime annuity policy
19 after all?

20 A. Yes.

21 Q. Can you tell me to the best you can recall what did
22 he tell you? Was it a telephone conversation?

23 A. Yes.

24 Q. What did he tell you in that conversation?

25 A. He said he called the life insurance people which I

1 think was MetLife and they said that it wasn't for life, it
2 was only twenty years and I told him I said they don't know
3 what they are talking about because it is supposed to be
4 lifetime.

5 Q. Okay.

6 A. I said it's twenty years for me and the kids if my
7 husband happens to pass away between 1983 and 2003. He goes
8 oh, and that was the end of it.

9 Q. And this was a phone conversation between you and
10 him?

11 A. Yes.

12 Q. I think you testified that you closed on your new
13 house in October of 1999?

14 A. Yes.

15 Q. So this telephone conversation that you had with
16 the loan officer at Newport Federal would have been before
17 that, before you closed on your house in October, 1999?

18 A. Yes.

19 Q. You just can't recall how long before that?

20 A. Right.

21 Q. Did you report that telephone conversation to your
22 husband?

23 A. Yes.

24 Q. It was kind of an important conversation?

25 A. Yes.

September 24 1999

DERMUS DIMON
P O BOX 56
WEST KINGSTON RI 02892 0056

RE: CONTRACT # SCW1126

Dear Mr. Dimon,

We received a call from Kathryn Dimon requesting information on the above contract. This contract was issued as a structured settlement on 5/5/1983. The owner of this contract is the American Motor Insurance Company. You receive monthly payments until the final payment on 5/5/2003. The monthly payments began on 6/5/1983 and increase 3% annually. This is programmed into the computer to increase 3% annually. I do not have specific payment amounts. To figure payments for the remaining years, increase the payment 3% each June 5.

If you have any questions, please call our Customer Service Center at 1-800-635-7775.

Sincerely,

Teresa Thorp

Teresa Thorp
Annuity Benefits

000033

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DENNIS DIMON,

Plaintiff,

VS.

C. A. No: 05-11073 REK

**METROPOLITAN LIFE
INSURANCE COMPANY, KEMPER
INSURANCE COMPANY,
MORGAN STANLEY DW, INC.,
MICHAEL B. LATTI, LATTI
ASSOCIATES, and LATTI &
ANDERSON, LLP,**

Defendants.

**PLAINTIFF DENNIS DIMON'S RESPONSE TO DEFENDANT,
METROPOLITAN LIFE INSURANCE COMPANY'S FIRST
SET OF REQUESTS FOR ADMISSION**

REQUESTS FOR ADMISSIONS

1. Admit that your signature on the Annuity Application, attached hereto as Exhibit "A", is your genuine signature.

Response 1

Although the copy attached as Exhibit "A" is mostly illegible I believe it is my signature.

2. Admit that Katherine Dimon is your wife and has been your wife since at least 1983.

Response 2

Admitted.

3. Admit that Katherine Dimon has contacted MetLife regarding your annuity contract.

Response 3

Admitted.

4. Admit that you received your annuity checks by mail.

Response 4

Admitted.

5. Admit that you received a letter from Teresa Thorp of MetLife, dated September 24, 1999, attached hereto as Exhibit "B".

Response 5

Admitted.

6. Admit that the letter attached as Exhibit "B" informed you that your final payment would be May 5, 2003.

Response 6

I admit that the letter attached as Exhibit "B" incorrectly stated that my payments would cease on May 5, 2003.

7. Admit that the document attached hereto as Exhibit "C" is a true and accurate copy of a letter from you to MetLife dated June 19, 2003.

Response 7

Admitted.

8. Admit that you received a letter from Sandy Franklin of MetLife, dated July 9, 2003, attached hereto as Exhibit "D".

Response 8

Admitted.

9. Admit that the reference to "Exhibit #2" in the letter from David Kaplan to MetLife, dated September 13, 2004 and attached hereto as Exhibit "E", is incorrect in that there was no Exhibit #2 attached to that letter.

Response 9

I cannot admit or deny this statement.

10. Admit that you were represented by Latti Associates in the Dimon v. Jenny C. matter.

Response 10

Admitted.

SIGNED UNDER THE PENALTIES OF PERJURY.

Dated: 4-24-06

Dennis Dimon
Dennis Dimon

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail (by hand) on 5/9/06

[Signature]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11073 WGY

DENNIS DIMON,)
Plaintiff,)
VS.)
METROPOLITAN LIFE INSURANCE)
COMPANY, KEMPER INSURANCE)
COMPANY, MORGAN STANLEY DW)
INC., MICHAEL B. LATTI,)
LATTI ASSOCIATES, and)
LATTI & ANDERSON LLP,)
Defendants.)

DEPOSITION OF DENNIS J. DIMON, a witness
called on behalf of the Defendant, taken pursuant
to the Provisions of the Federal Rules of Civil
Procedure, before Julie A. Healey, a Certified
Shorthand Reporter, Registered Professional
Reporter, and Notary Public in and for the
Commonwealth of Massachusetts, at the offices of
Ciapciak & Associates, P.C., 99 Access Road,
Norwood, Massachusetts, on June 29, 2006,
commencing at 11:25 a.m.

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101 Tremont Street
Boston, Massachusetts 02108

1 on my first house.

2 Q. Are you still paying off that mortgage?

3 A. Oh, yeah.

4 Q. And how long do you have left?

5 A. I don't know. I had to refinance, so, I
6 can't remember exactly. I think we went for a
7 thirty-year I think.

8 Q. And what did you do with this letter when
9 you received it?

10 A. This letter here, I'm not sure. My wife,
11 like I say, my wife takes care of a lot of the
12 paperwork and stuff like that.

13 She puts it in a file, or you know, if
14 it's a paper that the bank needed to see, then we,
15 you know, gave it to the bank for them, you know,
16 for them to go through.

17 Q. And do you know for a fact whether or not
18 this was given to the bank in support of your
19 application for a mortgage?

20 A. Not right offhand, no.

21 Q. Do you know anyone who would know that?

22 A. My wife would be the only one.

23 Q. So, when you learned in September of 1999
24 that the final payment on your annuity was going

1 to be in May of 2003, what did you do with that
2 information?

3 A. Like I said before, I thought it was a
4 mistake, and I said they didn't know, I told my
5 wife they don't know what they're talking about,
6 you know. It wasn't no signed document, you know,
7 nothing was ever said, so, I just blew it off.

8 Q. Okay.

9 MR. LeBLANC: Can you mark this as
10 Exhibit 12, please.

11 (Exhibit No. 12, Telephone Log,
12 marked for identification.)

13 BY MR. LeBLANC:

14 Q. Mr. Dimon, I'm going to show you what's
15 been marked as Exhibit 12. Have you ever seen
16 this document before?

17 A. No.

18 Q. Okay. I'm going to read from the
19 document where it says "From Tulsa Teleservices"
20 and the subject is "Call to 1-800-Met-5000 annuity
21 payouts."

22 The date on the document is 06/05/03, the
23 insured name is Dennis Dimon, and the caller name
24 is Katherine Dimon.

1 A. Yes, true.

2 Q. They did not come through any other third
3 party?

4 A. No.

5 Q. For example, they didn't come through
6 Latti Associates?

7 A. Right.

8 Q. After the Jenny C. case settled and you
9 began receiving the checks, did you have any
10 contact after that point with anyone from Latti or
11 Latti & Associates?

12 A. Very brief, yeah, nothing as far as
13 discussing on how much, you know, what was going
14 on with the money itself.

15 Q. When did that contact occur?

16 A. Um, just when simple things would come
17 up, like, one time when it changed hands, it was,
18 it was kind of late and stuff like that, it was,
19 like, almost two months late, something like that,
20 and we had to call up and find out what was going
21 on then, you know, because we always tried to keep
22 track of it to find out what was going on.

23 You know, there were brief, they were
24 just brief, you know.

1 Q. So, there was a time when the payments
2 from the insurance company were two months late?

3 A. Yeah, generally when it changed hands,
4 that's the way I took it, you know.

5 Q. But do you recall a specific instance
6 when the payments were two months late?

7 A. Just one that I know of, yeah.

8 Q. And do you recall generally when that
9 happened, what year, how long after the annuity
10 issued?

11 A. No, I can't remember right offhand, no,
12 exactly when.

13 Q. Was it closer in time to when the annuity
14 issued or closer in time to when the annuity
15 stopped paying, do you know that?

16 A. It was when the annuity was first going
17 on, it was, like, maybe, I would say a year after
18 it had started.

19 Q. Okay, and when the payments were two
20 months late, you contacted Latti Associates at
21 that point?

22 A. Right.

23 Q. And do you recall who you spoke to
24 directly?

1 A. No, I don't.

2 Q. And what did you ask them to do at that
3 time, if anything?

4 A. Well, I asked them if they could find out
5 what was going on and stuff like that, and they
6 did get back to me at one time and said that it
7 was on its way, that it was in the mail.

8 They didn't specify exactly what had
9 happened or anything else like that, they just
10 said, you know, that it was on its way.

11 Q. Okay. Other than that time where the
12 payments were two months late, were there other
13 times that you contacted Latti Associates?

14 A. No.

15 Q. So, that the next time you contacted them
16 after that was in June of '03 when the payments
17 stopped; is that correct?

18 A. Basically, yeah.

19 Q. Well, are there any other times that you
20 can recall between --

21 A. Not that I can recall, no.

22 Q. To your knowledge, did anyone on your
23 behalf, your wife or your mother or anyone else,
24 contact Latti Associates during that time?

July 9, 2003

DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892 0056

Dear Mr. Dimon,

We are unable to provide you with a contract. Annuities such as this one were issued due to a settlement from some other company, in your case, it was American Motorist Insurance Company. The company issued the settlement terms and the annuity was set up in accordance to the payment schedule.

This annuity, in accordance with the terms set by American Motorist Insurance Company, provided you with monthly payments for a total of 20 years. The payments increased by 3% each year in June. The first payment was on June 5, 1983. The final payment was on May 5, 2003.

Unfortunately, I do not have any additional information to provide you with.

If you have any questions, please call the customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

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